

NEW YORK STATE BAR ASSOCIATION AND WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK DOMESTIC VIOLENCE INITIATIVE

Final Report
November 2017

Opinions expressed in this Report are those of the NYSBA/WBASNY Domestic Violence Initiative and do not represent those of the New York State Bar Association or the Women's Bar Association of the State of New York unless and until they have been adopted the respective organization's Executive Committee, Board of Directors or House of Delegates.



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FINAL REPORT

EXECUTIVE SUMMARY

To help address the scourge of domestic violence in New York State, in the summer of 2016 the then-Presidents of the New York State Bar Association (NYSBA) and the Women's Bar Association of the State of New York (WBASNY) created a joint NYSBA/WBASNY Domestic Violence Initiative (the Initiative) to enhance access to legal services by victims of domestic violence in our state.

Domestic violence is ongoing, purposeful behavior aimed at exerting power and control over one's intimate partner and can be psychological, physical, sexual or economic in nature. It can also involve other family members. The Initiative focused on domestic violence involving people in current or former intimate relationships, whether or not they have lived together. Women and men who leave abusive relationships frequently have limited resources. Many desperately need legal assistance in seeking orders of protection against their abusers and in dealing with legal issues such as housing, child custody, support and visitation, and divorce.

High-quality civil legal assistance plays a vital role in protecting the health and well-being of victims and their children. Research has shown that access to legal services is one of the most effective interrupters of domestic violence, even more effective than access to shelters, hotlines, or counseling.¹ Legal services are the most expensive support services for domestic violence victims, and the services to which the fewest victims have access, yet they are essential to ending the cycle of violence and making a

¹ Farmer & Teifenthaler, *Contemporary Economic Policy*, Volume 21, Issue 2 (April 2003) at 158–172.

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victim whole. Despite tremendous efforts by legal services lawyers and pro bono volunteers, the need dwarfs the available resources. To increase access to justice for domestic violence victims, the Initiative worked with legal service providers, local bar associations and pro bono attorneys to educate, recruit and train additional volunteer attorneys.

The mission of the joint NYSBA/WBASNY Domestic Violence Initiative was to:

- Help educate attorneys around the state about domestic violence and the need for pro bono representation of victims, and help ensure that pro bono and civil legal services attorneys have access to the comprehensive training and education they need to provide effective legal services to address the broad range of issues faced by individuals and families affected by domestic violence, including those from diverse and traditionally underserved communities; and
- Expand the existing pool of volunteer attorneys and opportunities for volunteer service to victims of domestic violence, including by seeking to collaborate with bar associations throughout the state to help address the needs of domestic violence victims in their jurisdictions, partner with local domestic violence service providers to jointly educate their legal community and foster the recruitment of volunteers and the provision of pro bono legal services to victims through existing or newly-developed pro bono programs; and
- Examine and make recommendations concerning pending or proposed legislation that seeks to protect domestic violence victims.²

This Report summarizes the work of the Initiative, which made significant strides toward fulfilling its mission. However, the scourge of domestic violence and the accompanying need for legal services to assist victims continues. Although the Initiative will sunset after NYSBA and WBASNY approve this final report, both organizations are committed to continuing to support education and training programs, pro bono work, and legislative advocacy to assist domestic violence victims. Both organizations plan to leverage their respective domestic violence committees to house this ongoing work.

² The Mission Statement of the Initiative is attached as Exhibit 1 to this Report.

DOMESTIC VIOLENCE AND THE NEED FOR LEGAL SERVICES FOR VICTIMS

Described as ongoing, purposeful behavior aimed at exerting power and control over one's current or former intimate partner, domestic violence can be psychological, physical, sexual or economic in nature. Domestic violence victimization has no specific face, as it is experienced by New Yorkers without regard to their gender identity, sexual orientation, religion, race, ethnicity, age, disability or economic status.

Alarmingly, domestic violence is at an epidemic level in New York and around the country. According to the Centers for Disease Control and Prevention, nationally almost 25% of women and over 10% of men have suffered sexual violence by an intimate partner and over 22% of women and 14 percent of men have been subjected to at least one act of severe physical violence in an intimate relationship.³

Tragically, domestic violence sometimes is lethal. In 2016, although the total number of homicides increased only 2% statewide, the number of domestic violence-related homicides statewide increased by 22%.⁴ In 2016, nearly 48% of all of New York State's female homicide victims aged 16 and older were killed by their intimate partner.⁵ Of these intimate partner homicides, firearms and stabbing instruments were the weapons most often used in these killings.⁶

Not surprisingly, domestic violence victims' need for assistance dwarfs the availability of existing resources. According to New York's Office of Children and Family Services, although over 52,500 adults

³ Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization—National Intimate Partner and Sexual Violence Survey, United States, 2011 (available at: http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm?s_cid=ss6308a1_e).

⁴ New York State Office for the Prevention of Domestic Violence, New York State Domestic Violence Dashboard (hereinafter "2016 DV Dashboard"), 2016 Data (released October 2017), p.2 (available at: <http://www.opdv.ny.gov/statistics/nydata/2016/2016-dv-dashboard.pdf>).

⁵ Id.

⁶ Id.

and children were served by New York’s residential and non-residential domestic violence programs in 2016, another 28,560 people were denied shelter.⁷

Domestic violence victims often turn to the courts to disrupt the cycle of violence. They may access the justice system by pursuing criminal charges or a civil family offense petition against their abuser. In 2016 alone, New York’s civil and criminal courts issued 310,395 orders of protection that were required to be entered in the state’s Order of Protection Registry database⁸ – nearly 100,000 more orders than were issued just five years ago.⁹ In some cases, a victim’s point of entry into the court system may be through other family or matrimonial proceedings to dissolve relationships or protect children and family finances through divorce, custody, spousal or child support proceedings.

High-quality civil legal assistance has been shown to be one of the most effective interventions for protecting and empowering victims and their children.¹⁰ New York’s network of civil legal services programs offers assistance to many of the state’s domestic violence victims. However, legal services lawyers alone cannot meet this urgent need for legal representation for those with limited means. In the absence of adequate funding for civil legal services, access to competent *pro bono* legal services is essential to filling the access to justice gap. Access to a well-trained and domestic violence-sensitive private bar is equally critical for serving those families that do not need low-income legal assistance or for those legal issues not addressed by civil legal services.

⁷ New York State Office of Children and Family Services, *The Domestic Violence Prevention Act: 2016 Report to the Governor and Legislature* (released 2017), p.5 (available at: <http://ocfs.ny.gov/main/reports/DVPA/2016-DV-Annual-Report.pdf>).

⁸ Under Executive Law § 221, the Office of Court Administration refers to orders that must be filed with the Registry as “required.” These required orders involve intimate partners or family members. Other orders of protection issued against unrelated parties, such as neighbors or strangers, are “not required” to be filed with the registry and are not included in this data.

⁹ 2016 DV Dashboard at 1, 3.

¹⁰ See Jennifer S. Rosenberg and Denise A. Grab, Institute for Policy Integrity, New York University School of Law, “Supporting Survivors: The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence” (July, 2015) (available at: <http://policyintegrity.org/documents/SupportingSurvivors.pdf>).

In addition to legal services provided to victims, New York’s legislative response to domestic violence has revolutionized the interventions available to address victim safety and stability, as well as batterer accountability. Over the years, New York’s legislature has passed new laws specifically intended to alleviate concerns directly faced by victims of domestic violence or which have the potential to provide relief that assists and supports victims and their families. The legal response to domestic violence has evolved from solely addressing immediate basic needs, such as shelter access and orders of protection, to increasingly recognizing the more long-term needs that enable victims to live lives free from the influence of abuse. Although New York’s legislative scheme has begun to more fully address critical issues such as economic protections, food and housing insecurity, access to public benefits, employment, health care, discrimination and confidentiality, still more needs to be done. Through new legislative reforms, victims and their families should have access to a full scope of legal tools they need to obtain or maintain the security and stability that will enable them to move forward after domestic violence.

HISTORY OF THE INITIATIVE

In a ground-breaking move in the summer of 2016, Claire Gutekunst and Jacqueline Flug, the Presidents of the New York State Bar Association and the Women’s Bar Association of the State of New York, respectively, conceived a joint venture – the NYSBA/WBASNY Joint Domestic Violence Initiative – to bring their bars’ passions, expertise and resources to bear in supporting and improving New York’s legal response to intimate partner abuse, building on work done by WBASNY’s Domestic Violence Committee and NYSBA Sections and committees. Presidents Gutekunst and Flug tapped two long-time advocates for victims and families to lead the Initiative. Amy Schwartz-Wallace, Esq., is a Senior Attorney at the Empire Justice Center in Rochester, where she leads their well-regarded statewide domestic violence practice, and Hon. Judy Harris Kluger is Executive Director of Sanctuary for Families, a respected New York City-based domestic violence organization.

Before launching the Initiative, the Initiative Co-Chairs and Presidents Gutekunst and Flug developed a mission statement that established the Initiative’s goals to help raise awareness of domestic violence and offer training to pro bono and legal service attorneys; work with existing legal services providers, bar associations and others in the legal community to recruit more pro bono attorneys and develop pro bono programs for underserved communities across the state; and consider and make recommendations about possible legislation to strengthen protections for victims of domestic violence.¹¹

To do this work, Presidents Gutekunst and Flug appointed as members of the Initiative representatives from legal services providers, bar associations, law firm pro bono programs, the private bar, the state domestic violence agencies, the court system and law schools. In addition to organizational diversity, the members also boasted geographic diversity, which allowed the Initiative to understand the different needs and challenges facing urban and rural communities around the state.¹²

To assist in creating and executing the Initiative’s deliverables, each member was assigned to serve on either the Education and Training Subcommittee or the Pro Bono Subcommittee; a number of members also chose to participate in the Legislative Subcommittee.¹³ The Initiative Co-Chairs and subcommittee chairs developed specific goals for each subcommittee, which are set forth below at the beginning of each substantive subsection of “The Initiative’s Work and Recommendations” section of this Report. Each subcommittee was tasked with developing and managing the Initiative’s different deliverables.

¹¹ See Exhibit 1 to this Report.

¹² For the full roster of Initiative members and their respective organizations and locations, see Exhibit 2 to this Report.

¹³ For the rosters of members of each subcommittee, see Exhibits 3, 6 and 11 to this Report.

Each subcommittee was chaired by a member who created meeting agendas, ran subcommittee meetings, coordinated tasks and provided general oversight of all deliverables and drafting of reports. The Education and Training Subcommittee was led by Hon. Deborah Kaplan; the Pro Bono Subcommittee was led by Faye Polayes, Esq.; and the Legislative Subcommittee was led by Susan Pollet, Esq. Subcommittee chairs regularly met with the initiative Co-Chairs and the Bar Presidents.

The Initiative and the subcommittees were skillfully assisted throughout the year by the following NYSBA staff members: Jessica Patterson, Program Coordinator, Continuing Legal Education (general administrative support and Education and Training Subcommittee); Stacey A. Whiteley, Esq., Managing Director of Legal and Community Service (Pro Bono Subcommittee); Kevin M. Kerwin, Esq., Associate Director, Governmental Relations (Legislative Subcommittee).

The full Initiative membership met five times: October 28, 2016 (Manhattan); January 9, 2017 (Albany); March 10, 2017 (Manhattan); May 16, 2017 (Manhattan); and November 1, 2017 (by conference call). The Proskauer law firm in Manhattan and the NYSBA Bar Center in Albany served as our gracious and generous hosts. Between the full Initiative meetings, the subcommittees regularly met to do their work.

This Final Report outlines the work and recommendations of the three subcommittees, which have been approved by the full Initiative. This Report will be submitted to the NYSBA House of Delegates for approval at its meeting on January 26, 2018. It will be submitted to the WBASNY Board of Directors for approval at its meeting on January 27, 2018.

The Initiative looks to both WBASNY and NYSBA to implement the recommendations and continue the much-needed efforts to expand the availability of free legal services for domestic violence victims. WBASNY has a long-standing history of advocacy for domestic violence victims. The WBASNY Domestic Violence Committee (co-chaired by Initiative members Amanda Norejko, Esq., Susan

Pattenaude, Esq. and Susan Pollet, Esq.) will continue its efforts and implement the recommendations of the Initiative. NYSBA did not have a separate domestic violence committee.

To ensure that NYSBA continues to focus on domestic violence and implement the work of the Initiative, the Initiative encouraged President Gutekunst to find or create a home for this work within NYSBA. Recognizing the importance of institutionalizing NYSBA's efforts to continue the work of the Initiative and knowing that NYSBA has a very active and robust Family Law Section that already had presented significant programming concerning domestic violence but did not have a separate domestic violence committee, President Gutekunst reached out to the Chair of the Family Law Section and proposed that the Section create such a committee. He embraced the suggestion and the Section has now created a Domestic Violence Committee (co-chaired by Initiative members Alton Abramowitz, Esq., Elizabeth Douglas, Esq., Hon. Deborah Kaplan and Amy Schwartz-Wallace, Esq.).

Many of the Initiative's members plan to participate in one or both of the WBASNY Domestic Violence Committee and the NYSBA Family Law Section Domestic Violence Committee, to continue and build on the work of the Initiative.

THE INITIATIVE'S WORK AND RECOMMENDATIONS

I. EDUCATION AND TRAINING

Goal: Help ensure that pro bono and civil legal services attorneys have access to the comprehensive training and education they need to provide competent and effective services for individuals and families impacted by domestic violence, including those from diverse and traditionally underserved communities.

Goal: Raise awareness of domestic violence issues, including among attorneys who do not regularly represent domestic violence victims, and expand the existing pool of volunteer attorneys through education and outreach.

To achieve these goals, the Education and Training Subcommittee¹⁴ identified the significant tasks of the subcommittee and the Initiative as:

- Create, present and co-sponsor domestic violence-related education and training programs to increase awareness of and response to domestic violence. This training should include issues such as domestic violence dynamics basics, appropriate screening for and addressing domestic violence issues when they are identified, as well as intersecting substantive law issues.
- Enlist/work with CLE Chairs and other bar associations to help integrate similar training into CLEs being coordinated and planned by other NYSBA and WBASNY Sections, committees and chapters and other bar associations.
- Develop and host domestic violence-focused legal trainings, and enlist trainers with specific experience and competence with these issues. To the extent feasible, videotape these trainings and create a library of programs available for viewing on NYSBA's and WBASNY's websites.
- Explore and, to the extent feasible, develop and institute a system for making certain NYSBA- and WBASNY-sponsored CLEs available at low or no cost to civil legal services, pro bono, and other practitioners who exclusively or extensively represent domestic violence survivors and their families in topic areas that will boost the quality of their representation (e.g., deposition taking, trial skills, divorce economics). Create a list of legal service providers and other practitioners who provide pro bono services to victims of domestic violence and make them aware of this CLE benefit.
- Highlight the work of the Initiative and/or domestic violence generally (through panels/presentations) at both the NYSBA Annual Meeting in January 2017 and the WBASNY Annual Conference in May 2017.

Educational Programming Developed by the Subcommittee

The Education and Training Subcommittee worked diligently to design and produce a number of different CLE-eligible education programs to help raise awareness of and response to domestic violence by practitioners who do not serve litigants with domestic violence-related issues with great frequency, and to expand and improve representation of domestic violence victims and their families, including with a focus on marginalized communities (e.g., LGBT, youth, people with disabilities, immigrants,

¹⁴ The Education and Training Subcommittee was chaired by Hon. Deborah Kaplan, Statewide Coordinating Judge for Family Violence Cases. Its dedicated membership is listed in Exhibit 3 to this Report. The subcommittee thanks Jessica Patterson, Program Coordinator for Continuing Legal Education at NYSBA, for her support of the subcommittee's work.

veterans, elderly), by offering substantive legal training to both pro bono and legal services attorneys throughout New York State. It also identified, and encouraged NYSBA and/or WBASNY to co-sponsor, programs produced by other organizations that furthered the Initiative's educational goals.

The Initiative developed and/or co-sponsored five live CLE programs¹⁵:

1. "Speaking the Victim's Language," presented by the Third Judicial District Gender Fairness Committee and co-sponsored by NYSBA, WBASNY and several other organizations, on November 15, 2016, at the Third Judicial District Training Room in Castleton-on-Hudson, explored issues regarding language access and domestic violence.
2. "Ethics for the Family Law Practitioner," co-sponsored by the Initiative and several entities based in Westchester, on March 17, 2017, at the New York State Supreme Court, Westchester County in White Plains, NY, was targeted to reach attorneys who are members of the moderate means panel in the Ninth Judicial District.¹⁶
3. "A View from the Bench: An Unflinching View of Domestic Violence and New Ways To Protect Victims – the Challenges Facing Our Courts," was planned by the Initiative in collaboration with co-sponsors NYSBA Judicial and Family Law Sections and Hofstra University School of Law, to be presented at the law school on April 19, 2017, but had to be postponed and will be rescheduled at a later date.¹⁷

¹⁵ Copies of the flyers for these programs are included in Exhibit 4 to this Report.

¹⁶ Faculty for this program included Hon. Alan Hochberg, Natanya L. Briendel, Esq., Deborah Scalise, Esq. and Audrey E. Stone, Esq.

¹⁷ Hon. John Leventhal, Hon. Andrew Crecca and Hon. Deborah Kaplan were scheduled to be the faculty for this program.

4. “Domestic Violence Issues for the Housing Court Practitioner,” presented by the Initiative on April 25, 2017, at the NYC Family Justice Center in Manhattan.¹⁸
5. “Representation in Family Court Proceedings,” including a segment devoted to domestic violence prosecutions and defending orders of protection, co-sponsored by the Initiative, on June 9, 2017, at the State Bar Center in Albany, NY.¹⁹

The Education and Training Subcommittee also produced a five-credit CLE program that was presented by a faculty of experts in domestic violence²⁰, videotaped at NYSBA’s headquarters in Albany, publicized by both NYSBA and WBASNY and offered at no charge to members and non-members of NYSBA and WBASNY. The topics covered were:

1. “The Importance of Orders of Protection, Firearms and Domestic Violence”;
2. “Understanding Victims and the Effect of Domestic Violence on Children”;
3. “Elder Abuse and Capacity in Domestic Violence Cases”;
4. “Interviewing Clients with a Trauma-Informed Perspective”; and
5. “Immigration Issues in Domestic Violence Cases.”

These topics reflected the subcommittee’s desire to initiate, train and educate practitioners who are new to the issues and dynamics of domestic violence, while also providing additional training for those attorneys already well-versed in domestic violence legal issues. More than 500 attorneys viewed

¹⁸ Faculty for this program included J. Kevitt Adler, Esq., Amanda Norejko, Esq. and Devi Patel, Esq.

¹⁹ Faculty for this program included Hon. Deborah Kaplan, Nancy Farrell, Esq., Adele Fine, Esq., Thomas Gordon, Amanda McHenry, Esq., Jeremy Morley, Esq., Marguerite A. Smith, Esq., Gary Solomon, Esq., and Audrey E. Stone, Esq.

²⁰ Faculty for this program included Hon. Deborah Kaplan, Hon. Andrew Crecca, Amanda M. Beltz, Esq., Joan G. Levenson, Esq., Audrey E. Stone, Esq. and Kim Susser, Esq.

that program on May 9, 2017. This videotaped program has been archived on both the NYSBA and WBASNY websites and is available for viewing at no charge.²¹

Educational Programming at NYSBA's Annual Meeting

To highlight the Initiative and raise the awareness of a large group of attorneys who do not regularly represent domestic violence victims and to complement and supplement the programming developed by the Education and Training Subcommittee, NYSBA President Gutekunst dedicated half of the annual Presidential Summit at NYSBA's Annual Meeting in New York to a panel entitled "It's Not About 'Revenge' or 'Porn': The Problem of Intimate Partner Violence and Non-Consensual Sexual Image Exploitation."²²

Initiative Co-Chair Amy Schwartz-Wallace organized and moderated a panel of experts²³ who discussed image exploitation as a form of domestic violence and what research indicates about its particular impact on domestic violence victims, as well as legal strategies for assisting victims of this form of abuse, particularly given the limitations of New York's current legislative scheme to address this problem.²⁴ Several hundred attorneys who had registered for NYSBA's Annual Meeting attended the program in Manhattan on January 25, 2017, which provided 1.5 credits of CLE at no charge.

²¹ On the WBASNY website, the program can be accessed at <https://www.wbasny.org/the-domestic-violence-initiative-training-program/>. The program can be accessed on the NYSBA website at <http://www.nysba.org/store/detail.aspx?id=VER81>; when registering for the program on the NYSBA website, to view the program for free, use offer code DVCOMP17 until December 31, 2017, and after that date contact Jessica Patterson at jpatterson@nysba.org to obtain the effective offer code.

²² This program was recorded and can be accessed on NYSBA's website at <http://www.totalwebcasting.com/view/index.php?func=VIEW&id=nysbar&date=2017-01-25&seq=1>.

²³ In addition to moderator Amy Schwartz-Wallace, Esq., the panelists were Carrie Goldberg, Esq. (C.A. Goldberg, PLLC), Ian Harris, Esq. (Director of the Family Law Unit at Staten Island Legal Services), and Lawrence Newman, Esq. (Chief of the Domestic Violence Unit at the New York County District Attorney's Office).

²⁴ As the panel discussed, advances in technology and the ubiquity of the Internet and social media have given rise to a damaging new form of abuse, commonly, but mistakenly, referred to as "revenge porn." The threat or actual

Outreach to WBASNY Chapters and NYSBA Sections and Committees

To further the Initiative's goals of raising awareness of domestic violence and providing training concerning domestic violence to NYSBA and WBASNY members, in March 2017, Presidents Flug and Gutekunst sent a joint memo to WBASNY Chapters and to NYSBA Section and Committee Chairs.²⁵ The memo discussed domestic violence victims' need for legal assistance and the mission of the Initiative. It requested that the Chapters, Sections and committees consider collaborating with the Initiative to provide training relating to domestic violence to WBASNY and NYSBA members.

The memo asked those groups to consider whether the issue of domestic violence and serving victims could be incorporated into the programs the groups are planning, and offered the resources of the Initiative to help identify domestic violence experts in their area who could consult with the groups and speak at their CLE programs and other events. The memo also asked for the groups' help in publicizing the CLE programs developed and presented by the Initiative.

Access to Non-Domestic Violence-Related Training for Legal Services Domestic Violence Attorneys

In addition to the need for education and training concerning domestic violence issues, the Initiative recognized that legal services attorneys who primarily or exclusively represent domestic violence victims may need training to improve their representation of those victims in ancillary areas, such as taking depositions, trial advocacy, economic issues in matrimonial cases, and issues relating to

dissemination of sexually explicit images of an intimate partner without consent is a new tool for abusers to exert power and control over their victims, a hallmark of domestic violence. Abusers can obtain sexual images in many ways – with the victim's consent within the context of a romantic relationship, through coercion, unlawful surveillance, hacking, or by photo shopping fake images with the victim's face. However obtained or manufactured, they allow an abusive person to wreak havoc on the victim's life, by using threats of dissemination to force the victim to do what the abuser wants or by sending the images to family, employers or "revenge porn" websites, causing intense public humiliation, trauma, degradation, danger, job loss, and isolation. Once these images go public, victims are forced to navigate massive and complex hurdles as they attempt to remove the offending images from the public sphere.

²⁵ A copy of the memo is attached as Exhibit 5 to this Report.

employment, and that it may be difficult for their not-for-profit employers to pay for training in those areas. To address that need and to help fulfill the Initiative's goal of improving the representation of domestic violence victims, both WBASNY and NYSBA have established protocols by which attorneys employed by legal services organizations to represent domestic violence victims may take, at no cost, CLE programs offered by WBASNY Chapters and by NYSBA's CLE Department on topics that, although not directly focused on domestic violence, would enhance their representation of victims.

WBASNY and its Chapters have agreed that, at every CLE program offered by WBASNY or any of its Chapters, the WBASNY CLE fee will be waived for up to ten (10) attorneys employed by a non-profit organization in New York State that provides direct legal services to victims of domestic violence. For more information and to register for a particular CLE program, an eligible attorney or organization interested in taking advantage of this offer should contact the individual identified on that CLE program announcement or registration form as handling fee waivers for financial hardship.

NYSBA's protocol provides that any attorney who is employed by a not-for-profit organization in New York and who primarily or exclusively provides legal services to victims of domestic violence may view any NYSBA online CLE course at no charge. Attorneys or organizations wishing to take advantage of this offer should contact Jessica Patterson, CLE Program Coordinator (jpatterson@nysba.org) at NYSBA.

List of Speakers for Domestic Violence-Related Programs

To assist WBASNY and its Chapters, NYSBA's CLE Department and Sections and committees, other bar associations and organizations that present programs relating to domestic violence in ensuring that they can find competent, experienced speakers and panelists for their programs, the subcommittee has created a list of speakers on a variety of domestic violence-related topics. The subcommittee welcomes suggested additions to this list, which will change over time, and should be prominently

available on the WBASNY and NYSBA websites. Going forward, the Domestic Violence Committee of the NYSBA Family Law Section and the Domestic Violence Committee of WBASNY will both continually maintain the updated roster of speakers.

Community Education and Outreach

To complement the work of the Initiative and further its goals of raising awareness of domestic violence and increasing victims' access to legal services, NYSBA President Gutekunst recorded two public service announcements concerning the importance of recognizing domestic violence and reaching out for help in addressing it in one's own life or the life of a relative, friend or colleague. Through an arrangement between NYSBA and the New York State Broadcasters Association, these 30- and 60-second spots aired on radio stations around New York State in the fall of 2016 and the winter of 2016-2017.²⁶

Education and Training Recommendations

Recommendation 1: NYSBA and WBASNY should maintain a roster of expert speakers for training on domestic violence. The speaker list should be displayed prominently on each association's website.

Recommendation 2: Practice areas beyond the NYSBA Family Law Section and the WBASNY Domestic Violence Committee should incorporate domestic violence training into related CLE training programs.

Recommendation 3: Bridge-the-Gap CLE programs for newly admitted attorneys should incorporate the dynamics of domestic violence as a topic in criminal and family law CLE programs.

²⁶ The 60-second public service announcement can be heard on NYSBA's website at <http://www.totalwebcasting.com/view/index.php?func=VIEW&id=nysbar&date=2016-11-05&seq=1>.

II. PRO BONO

Goal: Expand the existing pool of volunteer attorneys through education and outreach and develop model pro bono programs that can be implemented in underserved communities in New York State

Goal: Encourage bar associations throughout the state to make meeting the needs of victims of domestic violence in their jurisdictions a priority, to partner with local domestic violence service providers and together educate their legal community about domestic violence and the need for pro bono representation of victims, and to foster the recruitment of volunteers and the provision of pro bono legal services to victims through existing or newly-developed pro bono programs

To achieve these sizeable goals, the Pro Bono Subcommittee²⁷ identified its significant tasks as:

- Determine geographic and substantive gaps in legal services provided to domestic violence victims and recommend strategies to fill those gaps;
- Learn how organizations attract and retain volunteers and replicate successful strategies in areas that are in need of more robust volunteer pools;
- Work with the partnering associations to identify and develop strategies to increase the supply of pro bono attorneys willing and able to work with domestic violence victims across the state;
- Identify and recommend best methods to alert volunteer attorneys to volunteer opportunities and domestic violence legal aid agency needs.

Surveys

To begin its work, throughout Winter 2016-2017 the subcommittee created and disseminated several online surveys targeting local bar associations, domestic violence programs, and legal services providers statewide. The intent of these surveys was to gather data concerning domestic violence services across the state and to use these results to assess existing resources and community needs to inform and shape the subcommittee's priorities and tasks. A total of 47 surveys were returned, 11 by local bar associations, 13 by domestic violence legal service providers, and 23 by domestic violence victim service providers from around the state.

²⁷ The Pro Bono Subcommittee was chaired by Faye Polayes, Esq. Its dedicated membership is listed in Exhibit 6 to this Report. The subcommittee thanks Stacey Whiteley, NYSBA's Managing Director of Legal and Community Service, for her support of the subcommittee's work.

List of Existing Pro Bono Providers

With the significant assistance of Stacey Whiteley of NYSBA, the subcommittee created a comprehensive, statewide detailed list of existing pro bono providers of domestic violence-related legal services. This list currently is available on request from Stacey Whiteley at NYSBA (swhiteley@nysba.org), and may be used to direct potential pro bono attorneys interested in assisting victims of domestic violence and their families to a local project that offers volunteer opportunities. The subcommittee hopes that the web-based platform that NYSBA developed in 2017 to connect volunteers interested in providing pro bono services to immigrants with providers of legal services to immigrants can be expanded to provide a platform to link volunteers interested in providing pro bono services to domestic violence victims to domestic violence legal services providers statewide.

Identification of Gaps in Legal Services Provided to Domestic Violence Victims

Through analysis of the List of Existing Pro Bono Service Providers²⁸ and the results of its Surveys, as well as group discussions, the subcommittee identified the following geographic and substantive gaps in the provision of legal services to domestic violence victims:

- Within New York City (and, to a lesser degree, in Westchester and Long Island), there is a significant supply of pro bono attorneys and legal programs serving victims of domestic violence. However, outside of the New York metropolitan area, that is generally not the case. Rather, in more than half the counties in New York (predominantly in the northeast quarter and middle of the state), there is a single legal services provider that holds itself out as providing legal services to domestic violence victims. Many of these providers use pro bono lawyers to some degree.
- There is a lack of attorneys qualified and willing to provide pro bono legal assistance to victims of domestic violence with respect to legal problems other than the domestic violence itself, such as matrimonial, landlord tenant/housing and immigration issues.
- General practice attorneys often lack awareness of the indicators and dynamics of domestic violence and are not able to identify issues of trauma or victimization in their clients. In

²⁸ Among other activities, the subcommittee plotted the service providers (from the list it compiled) onto a map of New York State, pictorially supporting its geographic gap conclusion.

addition, these attorneys lack expertise as to how to provide the legal services needed by their clients who are victims of domestic violence.

Seeking to fill these gaps drove the development of the proposals discussed below.

Proposals

The subcommittee researched and developed the following proposals, which the full Initiative has approved:

1. DOMESTIC VIOLENCE ADVISOR PANEL (“DVAP”): Modeled upon the work of several subcommittee members’ organizations, the subcommittee proposes the creation of the DVAP panel of volunteer, pro bono attorneys who would be available to provide peer information, support and general advice to other attorneys (pro bono and civil legal services) taking on pro bono cases involving domestic violence.²⁹ DVAP panelists, who would have both substantive legal expertise and domestic violence training, would provide limited back-up peer support to the pro bono attorneys. It is hoped that this type of assistance would make pro bono more attractive and effective because volunteer attorneys taking on these challenging cases would have a peer substantive law expert at the ready whom they could utilize on a limited basis to talk through thorny issues, ask questions and obtain strategic advice.
2. “LEGAL CLINIC-IN-A-BOX” TOOLKIT: Building upon the work of the award-winning Adirondack Women’s Bar Association’s Domestic Violence Clinic, as well as several successful pro bono clinical models used by subcommittee members in different parts of the state, the subcommittee developed a toolkit to be used by bar associations or other local community groups that will walk them through the process of setting up a brief advice-

²⁹ The DVAP proposal is attached as Exhibit 6 to this Report.

service pro bono clinic for domestic violence victims, including CLE training for volunteers, as well as sample forms and brochures.³⁰

3. CLE FOR PRO BONO TOOLKIT: To assist existing legal services providers statewide, and again based on models employed in certain counties, the subcommittee created a toolkit that existing legal services providers can use to develop a program that would provide free CLE programs on domestic violence dynamics and substantive law to attorneys, in exchange for a commitment to assist with at least one pro bono case involving a victim of domestic violence.³¹
4. PRO BONO ATTORNEY LIST/CONNECTING WITH LEGAL SERVICES PROVIDERS: The subcommittee proposes that NYSBA and WBASNY establish a process for identifying attorneys who may be interested in providing pro bono representation to domestic violence victims and assist in connecting them with legal services organizations that are seeking pro bono attorneys to represent domestic violence victims. This effort should include creating a list of attorneys attending domestic violence victim-focused CLE programs who are interested in providing (or helping to provide) legal support to victims of domestic violence on a pro bono basis. The bar association employees staffing the program should solicit the names of interested attorneys and their contact information. The list should be maintained and updated by the bar association on an ongoing basis and made available to organizations seeking such pro bono assistance.³²

The subcommittee also recommends that NYSBA expand its new web-based immigration portal to provide a platform to link volunteers interested in providing pro bono

³⁰ The “Legal Clinic-in-a-Box” Toolkit, including sample materials, is attached as Exhibit 8 to this Report.

³¹ The CLE for Pro Bono Toolkit, including sample materials, is attached as Exhibit 9 to this Report.

³² The Pro Bono Attorney List/Connecting with Legal Services Providers proposal is attached as Exhibit 10 to this Report.

services to domestic violence victims to domestic violence legal services providers statewide.

Pro Bono Recommendations

Recommendation 1: Through the Domestic Violence Committees of the NYSBA Family Law Section and of WBASNY, continue the work of implementing the four Pro Bono Subcommittee proposals, including creating the Domestic Violence Advisor Panel, establishing the Pro Bono Attorney list process, and supporting the dissemination and use of the Legal Clinic-in-a-Box Toolkit and CLE for Pro Bono Toolkit around the state.

Recommendation 2: Publicize the availability of the toolkits and the resources of the WBASNY and NYSBA Family Law Section Domestic Violence Committees as widely as possible, particularly in counties with a gap in legal resources supporting domestic violence victims.

Recommendation 3: Through the Domestic Violence Committees of the NYSBA Family Law Section and of WBASNY, continue to work to increase the supply of pro bono legal resources to victims of domestic violence.

Recommendation 4: Explore opportunities to use technology to link domestic violence victims needing legal support in one part of New York State with pro bono and legal services attorneys willing and able to provide this support in another part of the state.

III. LEGISLATION

Goal: Identify proposed legislation that would help protect and provide access to justice for survivors of domestic violence and prepare supporting memoranda that NYSBA, WBASNY and other interested groups can use to advocate for the adoption of that legislation by the New York State legislature.

The Legislative Subcommittee³³ worked to identify, review and then, with the assistance of staff from both NYSBA and WBASNY, advocate for appropriate legislation that would support domestic violence victims. After extensive research and vetting of numerous pieces of proposed legislation relating to domestic violence, the subcommittee identified three pieces of proposed legislation on which it recommended the Initiative focus its support:

³³ The Legislative Subcommittee was chaired by Susan Pollet, Esq.; its dedicated membership is listed in Exhibit 11 to this Report. The subcommittee thanks Kevin Kerwin, NYSBA's Associate Director, Government Relations, for his support of the subcommittee's work and assistance in advocating for passage of the legislation supported by the Initiative.

- A. 2919 (Lavine)/S. 405 (Robach): This bill would establish a right of tenants to call police or emergency assistance without fear of losing their housing. In some communities, a nuisance ordinance violation may be triggered if police or emergency services are called to a property a certain number of times over a set period of time; as a result, a landlord may opt to evict the tenant who triggered the violation. This bill would ensure that victims of domestic violence can access police or emergency assistance without fear of eviction.
- A. 5921 (Weinstein): This bill would amend the Family Court Act and the Criminal Procedure Law to simplify the Victim’s Rights Notice (“Notice”) for victims of domestic violence in criminal and family court proceedings, to make it clearer and more understandable to victims in crisis at most literacy levels and to incorporate changes in the law that were enacted after the Notice was enacted in 1994. The Notice would provide victims with basic information about their rights and remedies available through family and criminal courts, and information about resources, including domestic violence services, legal and medical resources, and assistance available from law enforcement.
- A. 6049 (Mayer)/S. 4569 (Savino): This bill would permit Family Court to award temporary spousal support when issuing a temporary order of protection. This bill is needed because when a domestic violence victim seeks an order of protection, the abuser often retaliates by withdrawing financial support, discontinuing payments of mortgages or utilities, and cutting off access to bank accounts.

The subcommittee drafted a memorandum of support for each of these bills and the full Initiative recommended that NYSBA and WBASNY approve the memos and support the bills. Each memo was converted into separate NYSBA and WBASNY bill memos. Thereafter, the WBASNY Board of Directors approved the bills and supporting WBASNY bill memos at its meeting on January 28, 2017. The NYSBA bill memos were posted on NYSBA’s Reports Page, making them available for review and comment by all members of NYSBA’s Executive Committee and House of Delegates, all of NYSBA’s committees and Sections and all local bar associations represented on NYSBA’s House of Delegates. NYSBA’s Family Law Section supported the bill providing temporary spousal support and the Committee on Women in the Law supported all three bills and suggested minor language changes in the supporting memoranda. The final NYSBA memos in support of the three bills were formally approved by the NYSBA Executive Committee on March 31, 2017.³⁴

³⁴ The NYSBA and WBASNY memos and copies of the proposed legislation are attached in Exhibit 12 to this Report.

Shortly thereafter, NYSBA's Government Relations staff circulated NYSBA's bill memos to key members of the New York State Assembly and Senate, advocating for swift passage. Over 20 WBASNY members from all over the state traveled to Albany in May 2017 to urge senators to support A. 2919/S. 405, concerning local nuisance laws, and A.5921, concerning simplification of the victim's rights notice. The WBASNY representatives met with the Senate leadership as well as Republican senators who opposed these bills. Additionally, WBASNY met with Kelli Owens, Director of Women's Affairs in the Governor's Office, to advocate for these bills. Lastly, via e-blasts, WBASNY urged all its members to call their local senators and ask them to support these bills.

The Assembly passed all three of the bills. However, despite both bar associations' advocacy efforts, the bills failed to secure passage in the Senate before the close of the legislative session in June 2017.

Legislative Recommendations

Recommendation 1: Continue to advocate for passage of the three bills discussed above.

Recommendation 2: On an ongoing basis, identify, review and advocate for passage of legislative proposals that would support domestic violence victims.

CLOSING

The joint Domestic Violence Initiative between NYSBA and WBASNY sought to help address the needs for education and training for attorneys and increased pro bono legal services for the victims of domestic violence in New York State, as well as enactment of legislation to assist domestic violence victims. As described in this Report, the Initiative's subcommittees have implemented trainings and developed pro bono-related proposals that, if enacted by bar associations around the state, would help this vulnerable population receive the legal services they desperately need, and have developed

memoranda of support for proposed legislation that would help domestic violence victims. We have made strides but much more needs to be done to combat this ongoing problem and assist the victims.

The Initiative is pleased that this work will continue at WBASNY, under the auspices and guidance of WBASNY's long-standing Domestic Violence Committee, and at NYSBA, under the auspices and guidance of the newly-formed Domestic Violence Committee of the Family Law Section. All of the co-chairs of those committees are members of the Initiative and many of the Initiative's members plan to participate in one or both of those committees, to continue and build on the work of the Initiative. The Initiative urges the current and future leadership and Chapters, Sections and committees of WBASNY and NYSBA to embrace and assist in implementing the Initiative's recommendations.

The Co-Chairs and members of the Domestic Violence Initiative appreciate the leadership of Presidents Gutekunst and Flug in recognizing the unmet legal needs of domestic violence victims in New York and providing the members the opportunity to help to identify and address these needs.

Respectfully submitted,

The NYSBA/WBASNY Domestic Violence Initiative

November 2017

Exhibit 1:

New York State Bar Association and
Women's Bar Association
of the State of New York
Domestic Violence Initiative
Mission Statement

New York State Bar Association and Women's Bar Association of the State of New York Domestic Violence Initiative

Domestic violence is at an epidemic level in New York and around the country. Domestic violence is ongoing, purposeful behavior aimed at exerting power and control over one's intimate partner, and can be psychological, physical, sexual or economic in nature. The Centers for Disease Control and Prevention estimate that nationally, almost 25 percent of women and 10 percent of men have suffered sexual violence by an intimate partner and over 22 percent of women and 14 percent of men have been subjected to at least one act of severe physical violence in an intimate relationship. New Yorkers experience domestic violence statewide without regard to gender identity, race, sexual orientation, religion, ethnicity, age, disability, or economic or educational status. Too often, domestic violence is lethal: in 2014, 45 percent of New York State's female homicide victims aged 16 and older were killed by an intimate partner.

Domestic violence victims often have few resources and desperately need legal help in obtaining orders of protection against their abusers and in addressing collateral issues, including but not limited to housing, child support, custody and visitation, and divorce. High-quality civil legal assistance plays an invaluable role in protecting and empowering victims and their children, while reducing recidivism by abusers. However, domestic violence victims' need for assistance dwarfs the available resources. Despite the tremendous efforts by legal services lawyers and the many hours of pro bono service by members of the private bar, there continues to be an urgent need for legal representation to ensure access to justice for those who need legal relief, safety and stability.

The New York State Bar Association and Women's Bar Association of the State of New York Domestic Violence Initiative will:

- Help educate attorneys around the state about domestic violence and the need for pro bono representation of victims, and help ensure that pro bono and civil legal services attorneys have access to the comprehensive training and education they need to provide effective legal services to address the broad range of issues faced by individuals and families affected by domestic violence, including those from diverse and traditionally underserved communities; and
- Expand the existing pool of volunteer attorneys and opportunities for volunteer service to victims of domestic violence, including by seeking to collaborate with bar associations throughout the state to help address the needs of domestic violence victims in their jurisdictions, partner with local domestic violence service providers to jointly educate their legal community and foster the recruitment of volunteers and the provision of pro bono legal services to victims through existing or newly-developed pro bono programs; and
- Examine and make recommendations concerning pending or proposed legislation that seeks to protect domestic violence victims.

Exhibit 2:

New York State Bar Association and
Women's Bar Association
of the State of New York
Domestic Violence Initiative
Roster

**New York State Bar Association/Women's Bar Association of the State of New York
Domestic Violence Initiative Roster**

Hon. Judy Harris Kluger
Co-Chair
Sanctuary for Families
New York, NY

Amy E. Schwartz-Wallace, Esq.
Co-Chair
Empire Justice Center
Rochester, NY

Alton L. Abramowitz, Esq.
Mayerson Abramowitz & Kahn LLP
New York, NY

Amy Pitcairn Barasch, Esq.
Her Justice
Bath, NY

Emma Louisa Buckthal, Esq.
ECBA Volunteer Lawyers Project
Buffalo, NY

Amy L. Christensen, Esq.
Legal Assistance of Western New York, Inc.
Bath, NY

Mary Beth Conway, Esq.
Volunteer Legal Services Project of Monroe
County, Inc.
Rochester, NY

Hon. Andrew A. Crecca
Supervising Judge of the Matrimonial Parts
of Suffolk County & Presiding Justice of the
Integrated Domestic Violence Court
Central Islip, NY

Elizabeth Anne Douglas, Esq.
Law Offices of Elizabeth A. Douglas
White Plains, NY

Brett M. Figlewski, Esq.
The LGBT Bar Association of Greater New
York
New York, NY

Janet R. Fink, Esq.
New York State Office of Court
Administration
New York, NY

Mary C. John, Esq.
Volunteer Lawyers Project of Onondaga
County Inc.
Syracuse, NY

Hon. Deborah A. Kaplan
Education and Training Subcommittee
Chair
Statewide Coordinating Judge for Family
Violence Cases
New York, NY

Jillian Lee McGuire, Esq.
Mackenzie Hughes LLP
Syracuse, NY

Stephanie M. Nilva, Esq.
Day One
New York, NY

Amanda Beth Norejko, Esq.
Sanctuary for Families
New York, NY

**New York State Bar Association/Women's Bar Association of the State of New York
Domestic Violence Initiative Roster**

Susan Patnode, Esq.
Rural Law Center of New York, Inc.
Plattsburgh, NY

Susan S. Pattenau, Esq.
The Legal Project
Albany, NY

Faye M. Polayes, Esq.
Pro Bono Subcommittee Chair
New York, NY

Susan L. Pollet, Esq.
Legislative Subcommittee Chair
New York, NY

Patricia L. R. Rodriguez, Esq.
Law Offices of Patricia L. R. Rodriguez
Schenectady, NY

Ellen C. Schell, Esq.
NYS Office for the Prevention of Domestic
Violence
Albany, NY

Lois Schwaeber, Esq.
The Safe Center LI, Inc.
Bethpage, NY

William Silverman, Esq.
Proskauer
New York, NY

Natalie J. Sobchak, Esq.
Pace University School of Law
Pace Women's Justice Center
White Plains, NY

Audrey E. Stone, Esq.
Office of the Statewide Coordinating Judge
for Family Violence Cases
New York, NY

Kim Susser, Esq.
Law Offices of Kim Susser
New York, NY

Jessica Hugabone Vinson, Esq.
Bartlett, Pontiff, Stewart & Rhodes PC
Glens Falls, NY

Taa R. Grays, Esq.
NYSBA Executive Committee Liaison
MetLife Inc.
New York, NY

Kevin M. Kerwin, Esq.
Staff Liaison
New York State Bar Association

Jessica Patterson
Staff Liaison
New York State Bar Association

Stacey Whiteley
Staff Liaison
New York State Bar Association

Exhibit 3:

New York State Bar Association and
Women's Bar Association
of the State of New York
Domestic Violence Initiative
**Education and Training
Subcommittee Roster**

**New York State Bar Association/Women's Bar Association of the State of New York
Domestic Violence Initiative Education and Training Subcommittee Roster**

Hon. Deborah A. Kaplan
Education and Training Subcommittee Chair
Statewide Coordinating Judge for Family
Violence Cases
New York, NY

Hon. Andrew A. Crecca
Supervising Judge of the Matrimonial Parts of
Suffolk County & Presiding Justice of the
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Syracuse, NY

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New York, NY

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Sanctuary for Families
New York, NY

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Legislative Subcommittee Chair
New York, NY

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Law Offices of Patricia L. R. Rodriguez
Schenectady, NY

Ellen C. Schell, Esq.
NYS Office for the Prevention of Domestic
Violence
Albany, NY

Jessica Patterson
Staff Liaison
New York State Bar Association

Exhibit 4:

**Flyers for Live CLE Programs
Developed or Co-Sponsored by
the NYSBA/WBASNY Domestic
Violence Initiative**

SPEAKING

THE

VICTIM'S

LANGUAGE

In the past, the voices of domestic violence victims were too often silenced by fear, intimidation and the fact that many in our systems simply were not listening. With much effort over the years, this is beginning to change.

But now a related problem has become prominent involving victims with Limited English Proficiency (LEP): A recent report by the National Center for State Courts and Center for Court Innovation revealed a nationwide lack of specialized training pertaining to

domestic violence and sexual assault cases. Domestic violence/ sexual assault proceedings are especially stressful for non-English speaking individuals and particularly challenging for interpreters.

Caregivers, advocates, police and courts, willing as they may be to victims a voice, cannot be fully effective if they are unable to understand what victims are saying—and if victims cannot comprehend what they are hearing. That language barrier discourages victims from seeking what may literally be life-or-death assistance.

The Unified Court System and its Office of Language Access have begun addressing one of the issues with a pilot program in which temporary and final orders of protection are issued in an English/ Spanish interlinear and bilingual format to ensure that the orders are fully understood by LEP parties. But more needs to be done.

FREE 3-CREDIT CLE PROGRAM Tuesday, November 15, 2016, 12:45 - 4:00 p.m.

Third Judicial District Training Room, 2500 Pond View, Castleton-on-Hudson, NY 12033 (Exit 10 on I-90 East) just minutes from downtown Albany (free parking is available).

The Third Judicial District Gender Fairness Committee presents a free, three-credit (in order to receive credit, attendees must attend the entire program) continuing legal education program that will explore the issues and nuances regarding language access and domestic violence. A group of panelists and presenters will drill down to explore the problem, and potential solutions.

CO-SPONSORS

Albany County Coalition Against Domestic Abuse, Albany County Bar Association, Capital District Women's Bar Association, Equinox, Inc., The Legal Project, New York State Bar Association, NYSBA Committee on Immigration Representation, Unity House, Women's Bar Association of the State of NY

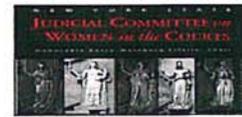
REGISTRATION INFORMATION

For more information and to register please visit:

<http://www.nycourts.gov/IP/language-access-3jd/index.shtml>

If there are questions, please email Beth Diebel at 3rdjdadministration@nycourts.gov





THE PACE WOMEN'S JUSTICE CENTER, THE WESTCHESTER WOMEN'S BAR ASSOCIATION, THE NYSBA/WBASNY DOMESTIC VIOLENCE INITIATIVE and THE NINTH JUDICIAL COMMITTEE TO PROMOTE GENDER FAIRNESS IN THE COURTS

are pleased to host a *brown bag* lunch and learn CLE program:

Ethics for the Family Law Practitioner

DATE: March 17, 2017

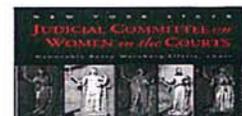
PLACE: Supreme Court Westchester County, Ninth Floor Conference Room

TIME: 12:30p.m. to 2:10p.m.

SPEAKERS: Presented by the Honorable Allen Hochberg, Esq. Family Court Support Magistrate (Ret.), Deborah A. Scalise, Esq. Scalise & Hamilton, LLP and Audrey E. Stone, Esq., Chief Counsel, Office of the Statewide Coordinating Judge for Family Violence Cases, New York State Office of Court Administration; Moderated by Natanya L. Briendel, Esq., Pace Women's Justice Center

PROGRAM DESCRIPTION: Lawyers face certain challenges on a daily basis, including the proper maintenance of escrow accounts and recordkeeping and electronic discovery issues. Additional developments in the lead case, "*Galasso*" and its related civil matters provide lessons as to the best practices in the firm and outside of the firm as to a lawyer's fiduciary responsibilities and reliance on others. In addition, the implications of the use of email and other electronic devices, as well as spyware in discovery are issues that consistently crop up. Our panel will discuss *Galasso* and its implications. Applying the New York Rules of Professional Conduct, precedent and bar association opinions, the Panel will discuss the applicable practical and ethical concerns that come into play when these issues arise.

CLE: Approval of CLE credit is in accordance with the requirements of the New York State Continuing Legal Education Board for a maximum of 2 Ethics credit per session. WBASNY is an accredited provider of CLE credits in New York.





REGISTRATION: www.wwbany.org

FEE: NO CHARGE for program attendance, \$30.00 if CLE credit is required. The fee is waived for members in good standing of the Pace Women's Justice Center Moderate Means Panel. Full and partial scholarships for this program, based on financial need, are available. Full scholarship for the \$10 CLE certificate charge (maximum of 10 attendees) for this program are available for attorneys at non-profit organizations that provide direct legal service for victims of domestic violence. For information and to apply, please contact Westchester Women's Bar Association President Susan Edwards Colson at 914-505-6045. All requests are confidential. For CLE credit, please register and pay online at www.wwbany.org.

RSVP: By March 10, 2017 to www.wwbany.org.

FOR QUESTIONS CONTACT: Natanya L. Briendel, Esq . at nbriendel@law.pace.edu

CLE: Pending approval by WBASNY in accordance with the requirements of the New York State Continuing Legal Education Board, acceptable for transitional credit for established and newly admitted attorneys. The Westchester Women's Bar Association is a chapter of the Women's Bar Association of the State of New York.

The opinions expressed by any program presenter are the presenter's own, and do not reflect the official position of the WWBA or WBASNY.

The Westchester Women's Bar Association is a chapter of the Women's Bar Association of the State of New York.





NEW YORK STATE BAR ASSOCIATION
JUDICIAL SECTION

Continuing Legal Education Special Event
**A View from the Bench: An Unflinching
View of Domestic Violence and
New Ways to Protect Victims**
Wednesday, April 19, 2017

Sponsors:

*New York State Bar Association Judicial Section; NYSBA Family Law Section; Hofstra Law School;
NYSBA/Women's Bar Association, State of New York, Domestic Violence Initiative*

MCLE Credits: 1.0 credit in Areas of Professional Practice; Acceptable for both newly-admitted and experienced attorneys

Wednesday, April 19, 2017

6 to 7:35 PM (reception to follow)

Hofstra Law School, 121 Hofstra University, Room 308, Hempstead, NY 11549

Registration Fee: \$20 attorneys

FREE: Members of the Judiciary; Law Students

Pre-registration strongly encouraged by Friday April 14th, as space is limited

Featured Speakers:

Hon. Deborah Kaplan, Statewide Coordinating Judge for Family Violence Cases, *A Snapshot of Current Issues in Domestic Violence*

Hon. John Leventhal, Appellate Division, 2nd Department, Author of *My Partner, My Enemy: An Unflinching View of Domestic Violence and New Ways to Protect Victims*

Hon. Andrew Crecca, Supervising Judge for Matrimonial Parts, Suffolk County Supreme Court, *Understanding The Challenges Courts Face in Protecting Domestic Victims & Their Families*

Registration: www.nysba.org/041917JUD

For assistance with online registration: **800-582-2452**

For information (program information only): **518-487-5570**



NEW YORK STATE BAR ASSOCIATION
One Elk Street, Albany, NY 12207

**POSTMASTER: CONTAINS DATED MATERIAL.
PLEASE DELIVER PROMPTLY. THANK YOU.**



WBASNY
WOMEN'S BAR ASSOCIATION
of the STATE OF NEW YORK



NYSBA/WBASNY Domestic Violence Initiative

Domestic Violence and Housing Law CLE

April 25, 2017

1:00pm – 2:30pm

New York City Family Justice Center
80 Centre Street, New York, NY

1.5 CLE credits (professional practice)

Cost – Free

Speakers:

J. Kevitt Adler, Staff Attorney, Sanctuary for Families

Devi Patel, Staff Attorney and Poverty Justice Solutions Fellow, Sanctuary for Families
Amanda Norejko, Matrimonial/Economic Justice Project Director, Sanctuary for Families

R.S.V.P. BY APRIL 17, 2017

TO: EVENTS@WBASNY.ORG

Representation in Family Court Proceedings

Friday, June 9, 2017

Registration 9:30 am - 10:00 am

Program 10:00 am - 5:00 pm

New York State Bar Association | 1 Elk Street | Albany, NY 12207

Description: Leading practitioners knowledgeable about representation in Family Court proceedings will provide an overview of best practices and offer practical advice and strategies. The day-long CLE will cover the outer boundaries of Article 10, best practices for representing third parties and relatives, provide an overview of defending and prosecuting cases involving domestic violence, cover the UIFSA, UCCJEA, ICWA and the Hague Conventions, and provide insight on relevant ethical issues. The CLE will feature a panel of experienced practitioners who will discuss special considerations in Family Court proceedings and offer practical suggestions and strategies for how to best represent your clients.

Registration Fee: THIS PROGRAM IS COMPLIMENTARY, and lunch will be served during the biannual awards ceremony for the Outstanding Achievements in Promoting Standards of Excellence in Mandated Representation and the Denison Ray Criminal Defender Awards. **MCLE credits will be available**

Register today nysba.org/COMRCLE17



Exhibit 5:

New York State Bar Association and
Women's Bar Association
of the State of New York
Domestic Violence Initiative
**Joint Memo to WBASNY Chapters and to
NYSBA Section and Committee Chairs**



To: NYSBA Committee and Section Chairs

Re: NYSBA/WBASNY Domestic Violence Initiative

Dear Committee and Section Chairs:

The New York State Bar Association and the Women's Bar Association of the State of New York have launched a joint initiative to enhance access to legal services for victims of domestic violence. Women and men who leave abusive relationships frequently have limited resources. Survivors of domestic violence need attorneys who are aware of the dynamics of domestic violence and how it can affect the lives of their clients. Trauma-informed legal representation can make a life-changing difference for these clients.

The mission of the Domestic Violence Initiative is to raise awareness of domestic violence and offer training to pro bono and legal services attorneys; work with bar associations and others in the legal community to recruit more pro bono attorneys; develop pro bono programs that can be implemented for underserved communities across the state; and support legislation to help domestic violence victims and their families.

As part of our bar associations' support for this important initiative, we are requesting our committees and Sections to consider collaborating with the NYSBA/WBASNY Domestic Violence Initiative to provide training relating to domestic violence to our members. Please consider whether the issue of domestic violence and serving victims can be incorporated into the programs you are planning this year. The Domestic Violence Initiative can help you identify domestic violence experts in your area who can consult with you and speak at your CLEs and other events. In addition, the Domestic Violence Initiative is organizing CLEs on several topics which we hope will be of interest to members of your committee or Section. We would appreciate your assistance in spreading the word about these training opportunities.

If you have any questions or wish to work with the Domestic Violence Initiative, including on organizing a CLE program or other event, and to access the resources and expertise we have available, please contact Jessica Patterson, NYSBA staff liaison to the Domestic Violence Initiative, at jpatterson@nysba.org or (518)487.5557.

Sincerely,

Jacqueline Flug
WBASNY President

Claire P. Gutekunst
NYSBA President



To: Chapter Presidents

Re: NYSBA/WBASNY Domestic Violence Initiative

Dear Chapter Presidents:

The New York State Bar Association and the Women's Bar Association of the State of New York have launched a joint initiative to enhance access to legal services for victims of domestic violence. Women and men who leave abusive relationships frequently have limited resources. Survivors of domestic violence need attorneys who are aware of the dynamics of domestic violence and how it can affect the lives of their clients. Trauma-informed legal representation can make a life-changing difference for these clients.

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If you have any questions or wish to work with the Domestic Violence Initiative and access the resources and expertise we have available, including on organizing a CLE program or other event, please contact Jessica Patterson, NYSBA staff liaison to the Domestic Violence Initiative, at jpatterson@nysba.org or (518)487.5557.

Sincerely,

Jacqueline Flug
WBASNY President

Claire P. Gutekunst
NYSBA President

Exhibit 6:

New York State Bar Association and
Women's Bar Association
of the State of New York
Domestic Violence Initiative
Pro Bono Subcommittee Roster

**New York State Bar Association/Women's Bar Association of the State of New York
Domestic Violence Initiative Pro Bono Subcommittee Roster**

Faye M. Polayes, Esq.

Pro Bono Subcommittee Chair

New York, NY

Alton L. Abramowitz, Esq.

Mayerson Abramowitz & Kahn LLP

New York, NY

Amy Pitcairn Barasch, Esq.

Her Justice

Bath, NY

Emma Louisa Buckthal, Esq.

ECBA Volunteer Lawyers Project

Buffalo, NY

Amy L. Christensen, Esq.

Legal Assistance of Western New York, Inc.

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Mary Beth Conway, Esq.

Volunteer Legal Services Project of Monroe
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Rochester, NY

Jillian Lee McGuire, Esq.

Mackenzie Hughes LLP

Syracuse, NY

Susan Patnode, Esq.

Rural Law Center of New York, Inc.

Plattsburgh, NY

Susan S. Pattenau, Esq.

The Legal Project

Albany, NY

Lois Schwaeber, Esq.

The Safe Center LI, Inc.

Bethpage, NY

Amy E. Schwartz-Wallace, Esq.

Empire Justice Center

Rochester, NY William Silverman, Esq.

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Exhibit 7:

New York State Bar Association and
Women's Bar Association
of the State of New York
Domestic Violence Initiative
**Domestic Violence Advisor Panel
("DVAP") Proposal**

NYSBA/WBASNY Joint Domestic Violence Initiative
Pro Bono Subcommittee
Faye M. Polayes, Chair

PROPOSAL TO ESTABLISH A PANEL OF PRO BONO ATTORNEYS TO PROVIDE
ADVICE TO LAWYERS PROVIDING *PRO BONO* (AND PAID/REDUCED FEE)
REPRESENTATION IN DOMESTIC VIOLENCE CASES AND IN OTHER TYPES OF
CASES WHERE DOMESTIC VIOLENCE HAS OCCURRED

I. The Panel would be known as the Domestic Violence Advisor Panel (the ‘DVAP’)

II. PURPOSE/MISSION OF THE DVAP:

- A. To encourage/attract attorneys who do not practice in the domestic violence area (including those who work for local legal service providers) to provide *pro bono* assistance (as well as paid and reduced fee representation) in domestic violence (DV) matters by improving their capacity to address the myriad of legal issues that arise in DV cases through the establishment of a panel of volunteer lawyers who would provide technical assistance (and other advice) to the *pro bono* attorneys (and certain paid and reduced fee attorneys) by offering their expertise both in the area of DV and in those legal areas affecting DV victims and in which DV issues arise.
- B. To provide technical assistance and other advice (and, in certain situations, acting as mentor) by attorneys with expertise in DV matters, to attorneys encountering DV in other areas of substantive law in order to enable them to identify DV and to assist their clients in addressing DV issues that arise in those non-DV matters.
- C. An attorney practicing in any area of law involving representation of individuals may encounter DV victims or DV issues. Examples of such areas (in alphabetical order) are:

- Criminal Law
- Litigation (including retaliatory litigation)
- Bankruptcy & Debtor/Creditor
- Elder Law
- Family and Matrimonial Law
- Housing and Landlord/Tenant
- Government entitlements
- Immigration
- Personal Injury
- Social Security & Disability
- Labor & Employment/Workers’ Compensation
- Trusts & Estates (and Tax)

I. CONTRIBUTION TO THE MISSION OF THE INITIATIVE'S *PRO BONO* SUBCOMMITTEE

The DVAP would improve the quality and scope of the *pro bono* and paid representation of DV victims through the provision of advice and technical and assistance by experienced attorneys to volunteer (and compensated) lawyers lacking knowledge or experience with DV and the overlapping areas of substantive law. The DVAP would provide advice (including, on occasion, acting as mentor) and technical assistance to the volunteer and paid lawyers that would enable them to knowledgeably and effectively represent their clients, while also providing similar assistance to lawyers in other disciplines encountering DV to help them recognize DV, to make appropriate assistance referrals of victims, and to deal with DV issues that impact their client's cases.

I. IMPLEMENTATION

- A. There would be one Panel, jointly sponsored by NYSBA and WBASNY, providing both Associations with "ownership" of the project. This co-sponsorship could be accomplished by the formation of a "joint committee" or of "cooperating committees" between the two Associations utilizing liaisons from one to the other. The participation of WBASNY would be through its Domestic Violence Committee. The participation of NYSBA would be through the new Domestic Violence Committee of the Family Law Section.
- B. An administrator of the DVAP would be required. The sponsoring organizations should be asked to address this matter. Presumably, these administrative responsibilities could be added to the duties of an existing NYSBA staff person.
- C. DV service providers would encourage their lawyers, current or retired, to serve as members of the DVAP, although the service providers would not be sponsors of the DVAP.
- D. NYSBA and WBASNY members would be would invited and encouraged to participate in the DVAP through outreach to the bar association committees and sections in the practice areas listed in Section I above.
- E. The DVAP would be contacted by telephone, e-mail or links in the websites of the sponsoring bar associations as well as of any other bar associations and organizations willing to participate by providing a link. Web pages with information related to the DVAP should be established by each organization.
- F. The administrator would ensure that the list of advisors who are serving on the DVAP remains current and would determine which volunteers would be appropriate based on expertise, geography, etc.

- G. The sponsoring committee may want to consider phasing in the practice areas (other than DV representation) in which the DVAP will advise. For example, the DVAP initially could include in addition to lawyers providing DV victim representation, family and matrimonial, housing/landlord tenant and immigration lawyers. Once the DVAP was functioning well in those initial areas, other practice areas could be added.
- H. The scope and extent of advice and technical assistance to be provided by the panel should be specified by the sponsoring committee. The role of a DVAP member should be circumscribed so that it is of limited duration and supportive only. See G above. It may be desirable to limit the practice areas covered by the DVAP.
- I. A written protocol outlining the expectations for the type, practice areas and form of advice that DVAP members would be providing is essential to attracting potential members as well as to ensure that members' time commitments are not unduly burdensome; thereby assuaging any doubts that potential DVAP members might have about committing to serve. (The question was raised as to whether or not DVAP members would be expected to do more than consulting with the volunteer – e.g., reviewing paperwork, etc. It would seem that generally this kind of support should be beyond the scope of the DVAP. Exceptions could be made in certain situations.)
- J. Essential to the success of the DVAP would be training, including training which is planned by the Initiative's subcommittee on DV training or by the Family Law section. A well-publicized "kick off" CLE would be a good starting point.
- K. In addition, ongoing training should be made available by means of webinars that would be recorded and accessible on the Sponsors' websites when needed by attorneys representing DV victims.
- L. It was suggested that paid attorneys (and perhaps reduced fee attorneys) who seek advice from the DVAP be encouraged to support the DVAP's activities and/or DV focused legal service organizations.
- M. *Pro bono* attorneys seeking to be DVAP members should be "vetted" by means of an application process at the outset where criteria would be established for minimum qualifications and for the fulfillment of minimum training requirements for which CLE credits would be granted. The sponsoring joint committee should be responsible for ensuring that DVAP members remain current by providing ongoing training and by requiring periodic recertification. That committee should also be vested with the ability to determine whether a DVAP member should continue to serve in the event of complaints by clients or others. (Provision must be made to protect the Sponsors from liability due to a member's misfeasance or malfeasance.)

N. A campaign to publicize the DVAP and its role/activities needs to be developed and maintained.

O. Periodic surveys of consumers/clients and DVAP members to monitor and improve the quality and effectiveness of the DVAP should be implemented by the Sponsors.

Respectfully submitted.

Exhibit 8:

New York State Bar Association and
Women's Bar Association
of the State of New York
Domestic Violence Initiative
"Legal Clinic-in-a-Box" Toolkit

**NYSBA/WBASNY DOMESTIC VIOLENCE INITIATIVE
TOOLKIT TO ESTABLISH LEGAL CLINIC FOR DOMESTIC VIOLENCE VICTIMS**

This toolkit provides the basic information, instructions and materials that your bar association or legal services organization (“Sponsoring Organization”) needs to establish a clinic that provides initial legal consultation and access to legal resources to victims of domestic violence (“Clinic”). The toolkit includes:

- Description and Purpose of the Clinic
- Steps for Clinic Creation
- Guidance regarding Clinic Operations
- Sample Materials

Description and Purpose of the Clinic

A legal clinic held at least once per month staffed by volunteer attorneys at an accessible office setting wherein each attendee meets individually with a volunteer attorney for a period of at least one half-hour for a consultation. The volunteer attorneys shall answer any general questions, provide information about resources and assist in completing paperwork, but shall not be required to provide representation.

The purpose of the Clinic is to increase access to legal representation and resources for survivors of domestic violence in your area with respect to their legal needs related to domestic violence, as well as legal matters ancillary to the domestic violence, such as custody, support, divorce, housing and bankruptcy.

The Clinic’s substantive scope can be as determined based on the goals of the establishing organization, attorney availability, etc.

Clinic upon which this Toolkit Is Based

This Legal Clinic Toolkit has been modeled on the Adirondack Women’s Bar Association Legal Clinic to Aid Survivors of Domestic Violence (“Adirondack Legal Clinic”). The Adirondack Women’s Bar Association is a chapter of the Women’s Bar Association of the State of New York. The Adirondack Legal Clinic was created in November 2010 and has been successfully operated for over six years. Through the Adirondack Legal Clinic, volunteer attorneys have provided legal advice and other assistance to hundreds of survivors of domestic violence. The Adirondack Legal Clinic is a valued asset in an area where access to civil legal services is limited. The Adirondack Legal Clinic is held the third Tuesday of each month at 5:30 pm at the offices of the Domestic Violence Project of Catholic Charities in Glens Falls, New York.

Steps for Clinic Creation

1. The Sponsoring Organization would provide the organizational support and structure (as well as malpractice insurance coverage and CLE credit for the volunteers) for the Clinic or would collaborate with a local bar association, if needed, to do so.

2. The Sponsoring Organization should designate a point person and create a committee to organize the creation of the Clinic and oversee implementation.
3. The point person and/or committee shall meet with local stakeholder organizations that provide services to survivors of domestic violence to ascertain the need for the Clinic, anticipated capacity of the Clinic and potential location of the Clinic. Such providers may include the licensed domestic violence service provider, the civil legal aid program(s), and other programs providing advocacy and support services to domestic violence survivors.
4. The point person and/or committee shall determine the Clinic location. The location should have office space or rooms which allow for confidential communication. The location should be easily accessible and readily available for Clinic attendees, as well as secure, if possible. Such locations may include offices of the local domestic violence services provider civil legal aid office, pro bono program, private law firm or other community agency. They should also be ADA accessible.
5. The point person and/or committee shall gather a list of volunteer attorneys who are willing to staff the Clinic. Attorneys may be recruited through state and local bar associations. Area law students may also desire to volunteer and to shadow the volunteer attorneys.
6. The point person and/or committee shall facilitate and/or provide information about CLEs or other trainings available to volunteer attorneys which address the provision of legal services to survivors of domestic violence, the safety issues that must be navigated, and other areas of concern faced by these survivors.
7. The point person and/or committee shall set the date(s) and time(s) of the Clinic and notify area service providers of the Clinic and who to contact with information for attendees.
8. The point person and/or committee shall ensure that malpractice insurance coverage is available for Clinic volunteers. If a civil legal aid program or pro bono program is the Sponsoring Organization, the program will likely be able to offer malpractice insurance coverage for volunteer attorneys.
9. The point person and/or committee shall create a client waiver form and survey. Samples attached were provided by WBASNY.
10. The point person and/or committee should consider creating a brochure to help publicize the Clinic to potential attendees. A sample brochure is attached. The point person and/or committee should also consider creating an area resource list to be given to each clinic participant, including information regarding the local civil legal aid program, LawHelpNY, and on-line filing forms.
11. The Sponsoring Organization should create a plan to address, in advance, any language access or accessibility accommodation that a domestic violence survivor clinic participant may need in order to participate in the clinic event.

Guidance regarding Clinic Operation

1. The point person and/or committee shall appoint a contact to: gather attendee names, significant other's names, phone number, subject area of questions; a contact to recruit volunteer attorneys; and a contact to administer the clinic.
2. Arrange for volunteer attorneys to staff clinic. Each volunteer shall complete a volunteer attorney form which shall list contact information, practice areas, language fluency, and affirm the attorney's good standing with the New York State Bar, lack of orders of protection wherein they are the restrained party, and lack of criminal background generally associated with domestic violence. A sample survey created by WBASNY is attached.
3. Provide attendee information to volunteer attorneys prior to Clinic to perform conflict check.
4. At beginning of Clinic, have clients sign waiver form and provide resource list to clients.
5. Assign one attorney to one client (avoiding any conflicts). Match attorneys with participants by area of expertise, if possible.
6. Appoint a timekeeper to inform attorneys when a session is complete.
7. Arrange for client to complete survey before they depart.
8. Analyze and compile survey information, as needed, to address any participant concerns.
9. Keep a record of volunteer attorneys, including practice areas, language fluency, and hours of service. If the Sponsoring Organization is an accredited pro bono CLE provider, the program will provide CLE credit to participating volunteer attorneys. (Volunteer attorneys earn 1 CLE credit for each 2 hours of pro bono service up to 10 CLE credits in each biennial reporting period.) If possible and desired, publish names of volunteer attorneys to provide recognition to the volunteer attorneys and to help recruit additional volunteers.
10. Success of this type of clinic requires a person (or persons) who takes responsibility for assuring that the various components of the Clinic are present each month – that the volunteer attorneys have committed to participate, that the space is available, that the forms and timekeepers will be there, etc. This responsible person could be the point person (or a committee of people who could share the responsibilities.). The success of the Adirondack Legal Clinic depended a great deal on the dedication of those who set it up and continue to maintain it.

List of Toolkit Sample Materials Attached

1. Sample Volunteer Attorney Information Form
2. Sample Brochure Informing Public regarding Clinic
3. Sample Brochure Describing Volunteer Opportunities at Clinic
4. Sample Client Intake Survey
5. Sample Legal Clinic Exit Evaluation

6. Sample Client Waiver

For more information or with questions, contact Stacey Whiteley of NYSBA (swhiteley@nysba.org), who can connect you with appropriate resources through the WBASNY Domestic Violence Committee or the Domestic Violence Committee of the NYSBA Family Law Section.

Doc. #477541

Volunteer Attorney Information

Name (please print) _____

Contact Information

Email Address _____

Preferred Telephone Number _____

Preferred Mailing Address _____

Name of Employer (if office) _____

Street Address _____

City, Zip _____

Are you a member of the _____ Association? Yes No

Please indicate your Areas of Practice:

Are you licensed to practice in New York State? Yes No

I hereby certify that all information on this form is true and correct. (Please sign below)

Did You Know?

- ◆ 85% of domestic violence survivors are women
- ◆ 1 in every 4 women will experience domestic violence in her lifetime.
- ◆ 1 out of 4 same-sex relationships has experienced domestic violence.

“He screamed at me in front of the children.”

“He threatened to get me deported.”

“He kicked the dog and said I would be next.”

“She slashed my tires.”

“He told our kids I didn’t love them.”

“He slapped my face and punched me in the stomach.”

“He cut up my credit cards and emptied our bank account.”

“He used the GPS on my phone to follow me everywhere.”

“She threatened to kill me and then kill herself.”

“He pointed a gun at me.”

About

[Sponsoring organization]

[Sponsoring organization

contact info]

[Partner Organizations or

Domestic Violence Service

Providers

contact info]

This clinic was inspired by the Domestic Violence Initiative, a joint project of the New York State Bar Association and the Women’s Bar Association of the State of New York.

Legal Clinic

to aid

Survivors of Domestic

Violence

*The Legal Clinic is held on the
[third Wednesday] of each month
at a confidential location in
[Town], New York*

[Sponsoring organization
logo]

[Name(s) of Sponsoring
organization and partner
organizations]

What is Domestic Violence?

A pattern of coercive behavior in which one partner or former partner attempts to control another through threats or actual use of tactics.

Domestic Violence is NOT

- A jealousy issue
- An anger management problem
- Caused by alcohol or substance abuse
- A mental illness
- A one-time incident

Have you or someone you know had a partner who is:

Verbally Abusive: using words to control, punish and damage someone's well-being. Abuser may threaten, humiliate, belittle, demean, berate, name-call.

Emotionally Abusive: undermining another's sense of self-worth. Abuser may constantly criticize looks, clothing, family, education or work experience, ability to love or be loved.

Psychologically Abusive: deliberately attempting to deceive another into questioning their own perception of reality. This is more than lying. Abusers may use false information to make partners doubt their own memory, perception, or sanity.

Financially Abusive: using money or access to money to make partners dependent. Abusers may keep financial information secret, limit access to funds by using an "allowance", refuse access to banking information or accounts, make financial decisions without input from partner, retain control of all assets.

Sexually Abusive: coercing sexual contact without consent. Abusers may manipulate or make threats to engage in intimate relations, perform sex acts they do not want to, force sex acts with others, force a woman to get pregnancy, engage in sex acts with partner who is unable to give consent because due to drugs or alcohol.

Physically Abusive: inflicting physical pain. Abusers may hit, punch, pinch, kick, shove, slap, restrain, strangle, drag by the hair.

Free 30-minute consultations in a confidential setting are available for people who are financially eligible.

The Legal Clinic to Aid Survivors of Domestic Violence

If you or someone you know has experienced abusive behavior by a partner or former partner and have questions about: [insert topics to be included, such as]

- Orders of Protection
- Child Custody
- Child Support
- Divorce
- Housing issues
- Foreclosures
- Credit and Debts
- Immigration

WE CAN HELP!

If you or someone you know is a survivor of domestic violence and needs help with legal issues such as these, please call The Legal Clinic to Aid Survivors of Domestic Violence to schedule an appointment with a volunteer attorney at:

(XXX) XXX-XXXX

Did You Know?

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- ◆ 1 in every 4 women will experience domestic violence in her lifetime.
- ◆ 1 out of 4 same-sex relationships has experienced domestic violence.

“He screamed at me in front of the children.”

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“He pointed a gun at me.”

About

[Sponsoring organization]

[Sponsoring organization

contact info]

[Partner Organizations or

Domestic Violence Service

Providers

contact info]

This clinic was inspired by the Domestic Violence Initiative, a joint project of the New York State Bar Association and the Women’s Bar Association of the State of New York.

Legal Clinic
to aid

Survivors of

Domestic

Violence

Volunteer

Opportunities

[Sponsoring organization
logo]

[Name(s) of Sponsoring
organization and partner
organizations]

What is Domestic Violence?

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Domestic Violence is NOT

- A jealousy issue
- An anger management problem
- Caused by alcohol or substance abuse
- A mental illness
- A one-time incident

The Legal Clinic to Aid Survivors of Domestic Violence

Domestic Violence

Survivors of domestic violence have a variety of legal needs and frequently do not have access to funds in order to consult with an attorney. The Legal Clinic to Aid Survivors of Domestic Violence was created to provide survivors with an opportunity to speak to a lawyer for free about their legal issues in a private and secure setting.

Volunteer lawyers may provide guidance and general information to attendees on a variety of topics, including [insert topics to be included, such as]:

- Orders of Protection
- Child Custody
- Child Support
- Divorce
- Housing issues
- Foreclosures
- Credit and Debts
- Immigration

Attorneys and law students interested in volunteering with The Legal Clinic should contact: [include contact info]

Training: Volunteers are required to attend a workshop about domestic violence. Additional trainings are offered on a variety of topics, such as [insert topics to be included, such as]: orders of protection, family law issues, divorce, housing, foreclosures, consumer debt, and immigration.

Malpractice Insurance: Volunteer attorneys are required to show proof of malpractice insurance. If the volunteer does not have insurance, malpractice insurance coverage will be provided through [bar association? Sponsoring non-profit?]

Time Commitment: The clinic is open for [#] hours on the [day] of the month. Each month, volunteers may sign-up for 30-minute consultations during clinic hours.

Conflict checks: Volunteer attorneys at the clinic will be given the list of attendees scheduled for consultations in advance to perform conflict checks.

Survivors of Domestic

Violence may

experience:

- ♦ Verbal Abuse
- ♦ Emotional Abuse
- ♦ Psychological Abuse
- ♦ Financial Abuse
- ♦ Sexual Abuse
- ♦ Physical Abuse

Legal Clinic Survey

Clinic Date _____

The information collected will be held in confidence and only used during your experience with the Clinic and statistically to determine the areas of law on which to focus, to assess whether legal clinics are helping to meet the needs of the community and to improve our services.

1. Gender: _____ Preferred Gender pronoun (i.e. she, he, they, other): _____ ?
2. What county do you reside in?
3. What is your marital or relationship status? Single Married Widowed Civil union or Registered Domestic Partnership
4. Check below the choice that best describes your current living situation:
 Own a house Rent Live in a shelter
 Live with Friend/Relative Homeless Other
5. How many people are there in your household including yourself? _____
6. Are you the head of household with children? Yes No
If yes, number of children? _____
7. Are you currently employed?
 Full Time Part Time SSI/SSD Not Currently Employed Retired
8. What is your annual household income? _____
9. What is your annual individual income? _____
10. Please identify the problem that brought you to this clinic:
 Family /Child Support Matrimonial (Divorce) Wills
 Real Estate Contracts Elder Law
 Bankruptcy/Credit Landlord/Tenant SSI
 Labor & Employment Discrimination (please name) _____
11. Have you ever sought advice from an attorney before today? Yes No

Legal Clinic Exit Evaluation

1. Did you find your legal consultation helpful? ___Yes ___No

Please describe why or why not:

2. Would you recommend the legal clinic services to others? ___Yes ___No

3. Would you use the legal services again? ___Yes ___No

4. Can you make any suggestions that would improve the legal clinic services?

Thank you for taking the time to complete this survey.

Clinic Waiver

Dear Clinic Participant:

Welcome to the _____ Association Legal Clinic.

It is our hope that by coming here you will obtain the legal information you need. Please understand that the attorney you meet with today is prepared to give you general information on a variety of topics. However, this attorney is not your legal representative in any way. Keep in mind that not every problem has a legal solution or a legal solution that is affordable.

Please be aware that the advice you receive today is of a general nature and you should consult your own attorney regarding any specific concerns such as meeting any relevant statute of limitations (time limit to bring your claim). If you need further assistance or representation we will try to provide an appropriate referral.

If you understand and agree to the above, please sign and date the form below and return it to us.

Again, we welcome the opportunity to serve you.

Signature

Printed Name

Date

Exhibit 9:

New York State Bar Association and
Women's Bar Association
of the State of New York
Domestic Violence Initiative
CLE for Pro Bono Toolkit

**NYSBA/WBASNY DOMESTIC VIOLENCE INITIATIVE
TOOLKIT TO ESTABLISH A PROGRAM WHICH OFFERS FREE CONTINUING
LEGAL EDUCATION (CLE) TO ATTORNEYS IN RETURN FOR PRO BONO
LEGAL SUPPORT TO DOMESTIC VIOLENCE VICTIMS**

This toolkit provides the basic information, instructions and materials that your legal services organization (“Sponsoring Organization”) needs to establish a program which would increase the pool of local attorneys who can provide pro bono legal services to domestic violence victims. This program (the “CLE for Pro Bono Program” or “Program”) accomplishes this by offering free CLE programs to attorneys in return for their commitment to assist the sponsoring organization in providing these legal services. The toolkit includes

- Description of the program;
- Steps for establishing the program;
- Guidance regarding program operations;
- List of required documents to be maintained in files; and
- Sample Materials.

Description and Purpose of the Program

The Program provides a means for sponsoring organizations with existing pro bono legal services programs to increase their capacity to provide legal representation to domestic violence victims by providing a free CLE to attorneys in return for their commitment to volunteer for the sponsoring organization. The sponsoring organization should already provide legal services to domestic violence victims. The Program would increase the sponsoring organization’s supply of willing and informed pro bono attorneys to assist it in representing these clients.

This CLE would be available to attorneys making the commitment to volunteer, as well as to other reduced fee and paid attorneys. Attorneys not making the commitment to volunteer would pay for the CLE. *(NOTE: Sponsoring organizations may have a pre-existing policy for – or against – charging attorneys for CLE when those attorneys do not take on a pro bono case. Each sponsoring organization should use the policy it is comfortable with.)*

Program upon which this Toolkit Is Based

This CLE for Pro Bono Program has been modeled on a successful program sponsored by the Volunteer Lawyers Project of Onondaga County.

Steps for Establishing a CLE for Pro Bono Program

1. The Sponsoring Organization should designate a point person and/or create a committee to organize the CLE for Pro Bono Program (the “Program committee”) and to oversee its implementation and maintenance.

2. The Sponsoring Organization should either (a) develop a CLE focusing on legal issues that typically affect domestic violence victims, such as obtaining Orders of Protection, family law matters (e.g., custody, child support, divorce), or other legal issues that may arise out of the domestic violence, or (b) partner with an existing CLE provider to provide the CLE. If the Program is to be a joint effort, the Program committee should have membership from both organizations.
3. The Sponsoring Organization should provide the organizational support for the program (as well as arrange for malpractice insurance coverage and CLE credit for the participating attorneys.)
4. The point person (or committee) should meet with staff and other members of the Sponsoring Organization and local domestic violence victim-focused organizations to determine the number and type of attorney volunteers needed.
5. Taking the results of these meetings into account, the point person (and/or the committee) should meet to determine: which agency is responsible for event registration, the topic(s) for the CLE, the desired speakers and moderator, the number of anticipated attendees, and a potential location for the CLE program. The location should have a large enough room for the anticipated number of speakers and attendees, and be ADA accessible. The available space should then be reserved or confirmed.
6. The point person and/or committee should gather a list of attorneys who are willing to speak and moderate the CLE program and then contact those speakers and moderators to confirm their availability.
7. The point person and/or committee should acquire with permission (or, if necessary, prepare) materials for the CLE program topic(s), including a timed outline as well as speaker biographies/profiles reflecting educational background and degrees. The speakers may have their own substantive and biographical materials that would meet the CLE requirements.
8. The point person and/or committee should set the date(s) and time(s) for the CLE and create a brochure or flyer to publicize the CLE to potential attendees. This flyer or brochure should be distributed to various organizations for distribution and posted on various agency websites and social media accounts as much as possible.
9. The point person and/or committee should attempt to contact potential donors (if possible) who are willing to underwrite or donate snacks and beverages for the CLE program. If that is not possible, the point person and/or committee should arrange that appropriate beverages and snacks are provided.

10. The point person and/or committee should follow up with presenters several times in advance of the program to ensure that they will be able to participate and to answer any questions.
11. The point person (and/or committee) should ensure that all materials are prepared well in advance of the CLE and reviewed to ensure they comply with CLE rules. All materials should be combined into a single document (electronic and/or hard copy, as appropriate) for distribution to attendees. The document should include a Title Page (which contains the sponsoring organization's name, date, presenter/moderator names, available CLE credits, and location). The timed outline and speaker profiles should be included as well as the substantive materials and description of the course format.
12. The point person and/or committee shall prepare a sign-up list to record each attendee's name, address, time-in and time-out for CLE purposes, practice areas of interest (e.g., family law), language fluency, and availability to take a case or volunteer.
13. The point person and/or committee shall, prior to the CLE, prepare evaluation forms and CLE certificates, ensuring that the appropriate category of CLE credit is designated (e.g., Skills, Professional Practice) and that appropriate credit is computed and provided for attendees and speakers.
14. The point person and/or committee shall maintain and keep a file with records of all of the above information for CLE purposes. The file should include copies of all materials generated for the program, including CLE required documents and timed outline, the sign-in sheets, evaluations and financial aid policy. See complete list of CLE File Requirements below.

Steps To Operate the CLE for Pro Bono Program

1. After steps 5-14 of the section above are followed to establish and prepare for the CLE program, the point person and/or committee shall designate a person to distribute flyers and secure various postings to publicize the CLE.
2. The point person and/or committee should designate a person to attend the CLE program and collect attendee sign-in names and other contact information.
3. The point person and/or committee shall designate a person (perhaps the person responsible for step 2 above or another) to oversee the sign-in of attendees, collection of evaluation forms and distribution of CLE certificates of attendance. CLE certificates should be provided in exchange for a completed evaluation form.

4. The point person and/or committee shall appoint a timekeeper to inform the presenters when their time is up and to assure compliance with CLE requirements in regard to length of presentations, etc.
5. The point person and/or committee shall appoint a person (or persons) to take responsibility for assuring that a CLE file (with the required file documents listed below) is maintained for at least 4 years in order to ensure that all CLE requirements are met.
6. Many of the steps for establishing and operating a CLE for Pro Bono program would need to be followed each year that the program is operating. See in particular Steps 5-14 of the Steps for Establishing a CLE for Pro Bono Program and the above steps in this section.
7. If the Sponsoring Organization(s) intend this program to be an annual event, the organization(s) should designate a person to take responsibility for assuring that the planning and implementation of the program each year is timely and complete. Successful multi-year programs rely on continuous maintenance and involvement ideally by a group of committed individuals whose involvement extends beyond a single year.

CLE File Requirements

1. Brochure or flyer/announcement (See attached sample)
2. Timed Agenda (See attached sample)
3. Speaker Biographies (See attached sample)
4. Copy of CLE materials prepared by presenters/speakers and Sponsoring Organizations
5. Completed New York CLE Certificate of Attendance. (See attached form that must be used until it is amended)
6. Evaluation Questionnaires (to be completed by attendees)*

*See also <http://www.courts.state.ny.us/attorneys/cle/index.shtml> for further and updated details regarding CLE Rules and Regulations.

(NAME OF AGENCY WITH LOGO TO THE LEFT OR ABOVE)
presents a

FREE CLE *

*in exchange for YOUR commitment to accept one (1) family law case pro bono from (NAME OF AGENCY) within one (1) year.

FAMILY LAW: CHILD SUPPORT (EXAMPLE ONLY)

Date: (INSERT DATE)

Time: - p.m. (registration starts at a.m./p.m.)

Location: (INSERT LOCATION AND ADDRESS)

Presenters: , Esq.
, Esq.

Moderators: , Esq., Staff Attorney at (NAME OF AGENCY)

Major Topics: (EXAMPLES ONLY BELOW)

- An overview of the laws governing child support in New York State
- How to prepare a petition for child support
- Filing the child support petition and the hearing
- Modification, enforcement and violations of child support orders

MCLE credits: 2.0 hours (INSERT SPECIFIC CREDITS; I.E. "PROFESSIONAL PRACTICE"). This is a transitional MCLE program and is appropriate for new admittees as well as experienced attorneys. Materials will/will not be provided/will be provided via email prior to the CLE and no written materials will be provided.

This CLE program is free of charge in exchange for a commitment of each attendee to accept one (1) family law case pro bono from (NAME OF AGENCY) within one (1) year.

(NAME OF AGENCY) has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education.

Register for this CLE on or before (INSERT DATE)

by visiting our website at:

(INSERT WEBSITE)

For inquiries, or to register by email, please contact:

(NAME), (TELEPHONE #),(EMAIL)

Special thanks to our lunch sponsor: (INSERT NAME)(IF APPLICABLE)

**(INSERT NAME OF AGENCY)
(INSERT TITLE OF AGENCY)
(INSERT LOCATION OF CLE)
(INSERT ADDRESS OF CLE)**

**(INSERT DATE OF CLE)
(INSERT TIME OF CLE)**

: to : P.M.

I. WELCOME: (INSERT NAME), Esq.

: to : P.M.

II. OVERVIEW OF CLE PROGRAM:(INSERT NAME), Esq.

: to : P.M.

III:

Presenter: (INSERT NAME), Esq.

: to : P.M.

IV:

Presenter: (INSERT NAME), Esq.

: to : P.M.

V:

Presenter: (INSERT NAME), Esq.

: to : P.M.

**VI. VIOLATION PETITIONS/PD REPRESENTATION:
QUESTIONS AND ANSWERS**

Presenter: (INSERT NAME), Esq.

SPEAKER BIOGRAPHIES

(INSERT NAME), ESQ.

(INSERT BIO FROM SPEAKER)

(INSERT NAME), ESQ.

(INSERT BIO FROM SPEAKER)

NEW YORK CLE CERTIFICATE OF ATTENDANCE

Revised 01/16
New York State CLE Board
www.nycourts.gov/attorneys/cle

MAY BE USED ONLY FOR PROGRAMS ACCREDITED BY THE NYS CLE BOARD
ALL INFORMATION MUST BE ENTERED BY THE CLE PROVIDER

This certificate is issued under §1500.4(b)(12) of the NYS CLE Program Rules and under §10(B) of the NYS CLE Board Regulations and Guidelines.
By issuing this certificate, the CLE provider verifies that the attorney named below completed this program.

Attorneys must retain their certificates of attendance for at least four (4) years from the date of the program.

NAME OF ATTORNEY:

TITLE OF PROGRAM:

DATE(S) OF ATTENDANCE: (For self-study programs, indicate date attorney completed program.)

LOCATION (City/State): (For self-study programs, check "Not Applicable.") Not Applicable

FORMAT OF PROGRAM: (Check only the format completed by the attorney to whom this certificate is issued.)

1 TRADITIONAL LIVE CLASSROOM FORMAT 2 FULLY INTERACTIVE VIDEOCONFERENCE

LIVE SIMULTANEOUS TRANSMISSION (webconference, teleconference, webcast, videoconference, satellite broadcast, etc.)

3 QUESTIONS ALLOWED DURING PROGRAM (SYNCHRONOUS INTERACTIVITY) 4 QUESTIONS NOT ALLOWED DURING PROGRAM

5 ON-DEMAND/RECORDED (audio/video) 6 OTHER (describe)

Newly admitted attorney format restrictions (except as provided in §2(A) and §2(F) of the Regulations):

Formats 1 & 2 --acceptable for credit in any category | Format 3 --not for Skills credit | Formats 4 & 5 --not for Skills or Ethics and Professionalism credit

ATTORNEY'S METHOD OF PARTICIPATION: (check only one)

GROUP SETTING or INDIVIDUAL/SELF-STUDY (including an attorney individually dialing in or logging in to a webconference, teleconference or webcast, or individually viewing/listening to a recorded program)

LEVEL OF DIFFICULTY – the **content** of the course is appropriate for: (check only one)

BOTH newly admitted and experienced attorneys (transitional/nontransitional), or

experienced attorneys ONLY (nontransitional), or

newly admitted attorneys ONLY (transitional)

CREDIT for ATTENDANCE

Credit is awarded in accordance with §8(A)(4)(a) of the Regulations.

Enter number of credits earned in each category:

Ethics and Professionalism

Skills

Areas of Professional Practice

Law Practice Management

In accordance with §10(B)(2) of the Regulations, for multiple breakout sessions, provider should attach a sheet indicating the sessions attended by the attorney.

CREDIT for FACULTY PARTICIPATION

(Experienced attorneys only)

Award credit in accordance with §3(D) of the Regulations.

Speaker

Panel member

Moderator

Law competition faculty

Enter number of credits earned in each category:

Ethics and Professionalism

Skills

Areas of Professional Practice

Law Practice Management

CLE PROVIDER INFORMATION

PROVIDER ORGANIZATION:

ADDRESS:

TELEPHONE:

PROVIDER AGENT SIGNATURE:

PRINT NAME:

THE CLE PROVIDER:

(check only one)

has been certified as an **Accredited Provider** by the NYS CLE Board,
or

has had this **individual course** accredited by the NYS CLE Board as
Course #

This certificate may **NOT** be used to award CLE credit to New York attorneys under New York's Approved Jurisdiction policy.

CLE EVALUATION
(WITH LOGO TO THE LEFT OR ABOVE)
(INSERT CLE NAME/TITLE)
(INSERT ADDRESS OF CLE)
(INSERT DATE)
(INSERT TIME(S) OF CLE)

Thank you for attending this (INSERT NAME OF AGENCY) training program. We would appreciate if if you would complete this evaluation form, to help plan future trainings.

1. **PRESENTERS:** Please rate each presenter on the criteria below, using a scale of 1 to 5, with 1 representing unacceptable to 5 representing excellent.

	(INSERT PRESENTER NAME)	(INSERT PRESENTER NAME)
Organized	_____	_____
Knowledgeable	_____	_____
Thorough	_____	_____

2. **PROGRAM:** Please rate each presenter on the criteria below, using a scale of 1 to 5, with 1 representing unacceptable to 5 representing excellent.

Materials	_____	_____
Content	_____	_____

3. Did the program enhance your knowledge about (INSERT SUBJECT AREA(S))?
4. Did the program make you feel more confident about handling a pro bono case in this area of law?
5. Please provide any other comments you have about the seminar, including changes you would suggest in presentation, content, materials or time.

6. How many years have you been in practice? _____

7. Do you practice in (circle one):

Large firm	Solo practice	Public sector
Medium firm	Government	
Small firm	Corporate	

8. Which months(s) are you most available to accept a pro bono case? _____

Name: (optional) _____

Exhibit 10:

New York State Bar Association and
Women's Bar Association
of the State of New York
Domestic Violence Initiative
**Pro Bono Attorney List/Connecting with
Legal Service Providers Proposal**

NYSBA/WBASNY Joint Domestic Violence Initiative
Pro Bono Subcommittee
Faye Polayes, Chair

PROPOSAL FOR NYSBA/WBASNY TO MAINTAIN AND MAKE AVAILABLE A LIST OF ATTORNEYS INTERESTED IN PROVIDING (OR HELPING PROVIDE) LEGAL SUPPORT TO VICTIMS OF DOMESTIC VIOLENCE

I. PURPOSE/MISSION OF THE LIST OF INTERESTED ATTORNEYS PROPOSAL:

- A. To compile and maintain a list of attorneys who have attended domestic violence focused CLE's and are interested in providing (or aiding in the provision of) legal services of various kinds to survivors/victims of domestic violence.
- B. To provide that list to legal service organizations seeking *pro bono* attorneys to aid in their provision of such services; thereby increasing the availability of *pro bono* attorneys providing legal services to domestic violence victims.

II. CONTRIBUTION TO THE MISSION OF THE INITIATIVE'S *PRO BONO* SUBCOMMITTEE

This list will fulfill the mission of the *Pro Bono* Subcommittee because it will increase the number of *pro bono* attorneys available to provide and providing legal services to domestic violence victims.

III. DESCRIPTION

At the beginning and end of their domestic violence focused CLE programs (or domestic violence programs that they co-sponsor), NYSBA or WBASNY staff running the program would announce that any attorneys attending the CLE who are interested in getting involved with the provision of necessary legal services to domestic violence victims should give their names and contact information to the staff and that the sponsoring bar association(s) would provide that list to legal services organizations seeking volunteer attorneys. The list would be compiled and maintained by the bar associations. It would be expected to grow over time and be updated. The list should be organized geographically. The bar associations would publicize the list and make it available to organizations asking for it.

IV. SPONSOR

Both NYSBA and WBASNY should sponsor this proposal. Unless the bar association staff are willing to take this on as a project, a committee or section (or multiple committees and sections) will need to “own” this project.

V. IMPLEMENTATION

- A. NYSBA and WBASNY decide that they are willing to compile and maintain this list and that it is a valuable service.
- B. A blank list document should be developed which is entitled, “Attorneys interested in providing (or helping others to provide) legal services to victims of domestic violence” which provides columns for name, email address and phone.
- C. Text for an announcement to be made at the beginning and end of domestic violence focused CLE programs is drafted.
- D. The sponsoring bar associations inform their staff members who run CLE programs with a domestic violence component that this announcement should be made at the beginning and end of the program.
- E. The bar associations should publicize the existence of this list on their websites and by sending emails to legal services organizations who may be in need of *pro bono* support. These emails should offer to provide a copy of the list. If the bar association has a webpage focused on domestic violence or *pro bono* activity or both, the information on the list should at least appear on these webpages. Depending on the geographic diversity of the attorneys on the list, the list should be offered to organizations anywhere in the state.
- F. The members of the sponsoring committees (or the NYSBA/WBASNY staff, as appropriate) would maintain and update the list. The list should organize the volunteering attorneys by county or city, as appropriate.

Respectfully submitted.

Exhibit 11:

New York State Bar Association and
Women's Bar Association
of the State of New York
Domestic Violence Initiative
Legislative Subcommittee Roster

**New York State Bar Association/Women's Bar Association of the State of New York
Domestic Violence Initiative Legislative Subcommittee Roster**

Susan L. Pollet, Esq.
Legislative Subcommittee Chair
New York, NY

Amanda Beth Norejko, Esq.
Sanctuary for Families
New York, NY

Susan S. Pattenaude, Esq.
The Legal Project
Albany, NY

Lois Schwaeber, Esq.
The Safe Center LI, Inc.
Bethpage, NY

Kevin M. Kerwin, Esq.
Staff Liaison
New York State Bar Association

Exhibit 12:

NYSBA and WBASNY Memos of
Support of Proposed Legislation
and Copies of Proposed Legislation

Memorandum in Support

NYSBA Memorandum #13

April 3, 2017

A. 2919
S. 405

By: M. of A. Lavine
By: Senator Robach

Assembly Committee: Codes
Senate Committee: Codes
Effective Date: Immediately

AN ACT to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

The New York State Bar Association supports this bill, which would establish the right of tenants to call police or emergency assistance without fear of losing their housing as a result of landlord actions or local nuisance laws. This legislation would protect victims of domestic violence unfairly affected by the law as it currently exists.

BACKGROUND

Nuisance Ordinances were originally created to target abandoned properties where crime occurred with more frequency because properties were unsupervised. The objective of such ordinances was to target offenses related to drugs, property damage and weapons by requiring landlords to be responsible for ensuring that their properties were not used to harbor and enable criminal activities.

In recent years, however, such laws have been applied more broadly to regulate and sanction activities at occupied properties. In some communities, the ordinance is triggered if police or emergency services provide aid or are called to a property a certain number of times over a set period of time (i.e., three calls for help to the police over 12 months). In general, these triggers are applied without consideration of whether the call was made by the victim of a crime seeking police assistance out of legitimate fear.

These laws often hold property owners responsible for the behavior of their tenants. Therefore, once a property owner receives a nuisance citation, the owner must “abate the nuisance” or face penalties. Therefore, landlords often chose to evict the tenant who triggered the nuisance ordinance violation.

A Harvard study established that an ordinance of this type in Milwaukee punished victims of domestic violence far more frequently than the offenses it was intended to target, such as those related to drugs, property damage and weapons.

ANALYSIS

This bill would ensure that victims of domestic violence and other crimes can access police or emergency assistance without fear of losing their housing.

The bill would add a new Article 9 to the Civil Rights Law. The bill includes language allowing a victim to be free of penalty for accessing assistance because he or she resides at a property where domestic violence or other law enforcement activity has occurred. Additionally, property owners are protected under proposed Article 9, Section 93. Section 93 would protect property owners from penalty for respecting the rights of the occupant to request police or emergency assistance. If a municipality seeks to improperly enforce a nuisance ordinance under this bill, notice is required to such tenant or occupant allowing the opportunity to contest the enforcement.

In addition to carving out protection for domestic violence victims, the bill specifically states that the protections provided shall not be deemed to prohibit a municipality from enforcing an ordinance or local law, nor restrict a landlord from terminating, evicting or refusing to renew a tenancy, when such action is premised on grounds *other than* access of police or emergency assistance, or is otherwise premised on conduct unrelated to the residential occupant's status as a target or victim of violence/harm.

Such protections are of critical importance to domestic violence victims, who need access to safe, stable long-term housing. Discrimination is a serious barrier preventing many domestic violence victims from renting, leasing, or buying a home. Studies show that when potential landlords identify that the perspective tenant is a victim of domestic violence, they frequently refuse to rent what is available or express that there is no availability. Landlords may use these nuisance ordinances as a basis to discriminate against victims of domestic violence by evicting them on the basis of the actions of their abusers. Allowing victims of domestic violence to lose their housing under these ordinances puts vulnerable families at risk and increases costs to communities who must consequently provide shelter services to survivors and their children. Domestic violence victims may be left with the options of either returning to or remaining in unsafe living conditions with abusive partners without seeking law enforcement assistance or subjecting themselves to the dangers inherent in homelessness.

CONCLUSION

This bill would permit nuisance ordinances to be used in the manner originally intended, while avoiding unintended consequences and discrimination against victims of domestic violence and other crimes. This will ensure that all New Yorkers can request lifesaving emergency aid in response to threats and violence without fearing they will be doubly victimized by losing their housing.

This legislation would provide a meaningful step toward eliminating one of the barriers to survivors of domestic violence obtaining emergency assistance while maintaining their housing.

Based on the foregoing, the New York State Bar Association **SUPPORTS** the enactment of this bill.

WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK

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info@wbasny.org



Position Statement - 2017

A.2919 Lavine/ S.405 Robach

An act to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections

Support

The Women's Bar of the State of New York (WBASNY) supports A.2919 / S.405, which establishes the right of tenants to call police or emergency assistance without fear of losing their housing as a result of landlord actions or local nuisance laws. This legislation is of particular importance to our organization because it seeks to protect victims of domestic violence unfairly affected by the law as it currently exists.

HISTORY:

Nuisance Ordinances were originally created to target abandoned properties where crime occurred with more frequency because properties were unsupervised. The objective of such ordinances was to target offenses related to drugs, property damage and weapons by requiring landlords to be responsible for ensuring that their properties were not used to harbor and enable criminal activities.

In recent years, however, such laws have been applied more broadly to regulate and sanction activities at occupied properties. In some communities, the ordinance is triggered if police or emergency services provide aid or are called to a property a certain number of times over a set period of time (i.e., three calls for help to the police over 12 months). In general, these triggers are applied without consideration for whether the call was made by the victim of a crime seeking police assistance out of legitimate fear.

These laws often holds property owners responsible for the behavior of their tenants. Therefore, once a property owner receives a nuisance citation, the owner must "abate the nuisance" or face penalties. Therefore, landlords often chose to evict the tenant who triggered the nuisance ordinance violation.

A Harvard study established that an ordinance of this type in Milwaukee punished victims of domestic violence far more frequently than the offenses it was intended to target, such as those related to drugs, property damage and weapons.

AMENDMENT:

The proposed amendment, entitled "*An act to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections,*" would ensure that victims of domestic violence and other crimes can access police or emergency assistance without fear of losing their housing.

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This is achieved by amending Article 9 to include language allowing a victim to be free of penalty for accessing assistance because he or she resides at a property where domestic violence or other law enforcement activity has occurred. Further, section 93 is added to Article 9, protecting property owners from penalty for respecting the rights of the occupant to request police or emergency assistance. If a municipality seeks to improperly enforce a nuisance ordinance under this bill, notice is required to such tenant or occupant allowing the opportunity to contest the enforcement.

In addition to carving out protection for domestic violence victims, the law specifically states that the protections provided shall not be deemed to prohibit a municipality from enforcing an ordinance or local law, nor restrict a landlord from terminating evicting or refusing to renew a tenancy, when such action is premised on grounds *other than* access of police or emergency assistance, or is otherwise premised on conduct unrelated to the residential occupant's status as a target or victim of violence/harm.

Such protections are of critical importance to domestic violence victims, who need access to safe, stable long-term housing. Discrimination is a serious barrier preventing many domestic violence victims from renting, leasing, or buying a home. Studies show that when potential landlords identify that the prospective tenant is a victim of domestic violence, they frequently refuse to rent what is available or express that there is no availability. Landlords may use these nuisance ordinances as a basis to discriminate against victims of domestic violence by evicting them on the basis of the actions of their abusers. Allowing victims of domestic violence to lose their housing under these ordinances puts vulnerable families at risk and increases costs to communities who must consequently provide shelter services to survivors and their children. Domestic violence victims may be left with the options of either returning to or remaining in unsafe living conditions with abusive partners without seeking law enforcement assistance or subjecting themselves to the dangers inherent in homelessness.

CONCLUSION:

This amendment permits nuisance ordinances to be used in the manner originally intended, while avoiding unintended consequences and discrimination against victims of domestic violence and other crimes. This will ensure that all New Yorkers can request lifesaving emergency aid in response to threats and violence without fearing they will be doubly victimized by losing their housing.

Passing this legislation is a meaningful step toward eliminating one of barriers to survivors obtaining emergency assistance while maintaining their housing.

For the foregoing reasons, WBASNY supports A.2919/S.405.

Memorandum in Support

NYSBA Memorandum #14

April 3, 2017

A. 5921

By: M. of A. Weinstein
Assembly Committee: Judiciary
Effective Date: 90th day after it shall have become
a law

AN ACT to amend the family court act and the criminal procedure law, in relation to notification of rights of victims of domestic violence in criminal and family court proceedings

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

The New York State Bar Association supports this bill, which would amend the Family Court Act and Criminal Procedure Law in relation to notification of rights to victims of domestic violence in criminal and family court proceedings.

BACKGROUND

The Victim's Rights Notice, originally enacted in 1994, was designed to ensure that victims were made aware of their rights, of the expectations they may have to obtain assistance from the civil and criminal justice systems, and of the remedies and resources available to them. The Notice is required to be distributed as part of a victim's copy of the Domestic Incident Report, and has been promulgated by the Office of Court Administration in eight languages.

ANALYSIS

While some form of the Victim's Rights Notice has been in effect for over twenty years, the Notice has not been substantially changed. This bill would substantially simplify the Notice so that it is now in plain language. It would make the Notice much more clear and understandable to victims in crisis at most literacy levels. At the same time it would considerably expand on the information it provides. The bill would also incorporate changes in the law that have taken place since the Notice was first developed. The bill would also require that the Victim's Rights Notice be translated into, at a minimum, Spanish, Russian and Chinese.

The Notice, as it would be revised by this bill, reads at an average 8.7 (middle school) level, in contrast to the 14.0 (college level) average of the current notice. It would also provide critical information to domestic violence victims throughout New York State. The information would be broken down into shorter sentences with easier to read bullet points. It would provide victims with basic yet detailed and straightforward information about their rights and remedies under the law; important information about emergency domestic violence hotlines and services; legal and medical resources; what to expect from law enforcement, including what assistance may be immediately available to them when they first call law enforcement; and what remedies may be available through criminal and family courts.

Under this bill, when law enforcement intervenes in a domestic violence call, this notice is required to be immediately shared with the victim in writing and, if necessary, orally. The bill would also require the notice to be available in plain English, Spanish, Chinese and Russian. The Notice would also be provided by a District Attorney investigating a family offense, and by family courts to victims of family offenses. The Notice would also be distributed to the state Department of Health for distribution to all hospitals.

CONCLUSION

Based on the foregoing, the New York State Bar Association **SUPPORTS** the enactment of this legislation.

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Position Statement -02017

Update and Simplification of the Domestic Violence Victim's Rights Notice

A.5921 (Weinstein)

Support

The Women's Bar Association of the State of New York (WBASNY) supports bill A.5921 (Weinstein), which would amend the family court act and criminal procedure law in relation to notification of rights to victims of domestic violence in criminal and family court proceedings. The Victim's Rights Notice, originally enacted in 1994, was designed to ensure that victims were made aware of their rights, of the expectations they may have to obtain assistance from civil and criminal justice systems, and of the remedies and resources available to them. The notice was required to be distributed as part of a victim's copy of the Domestic Incident Report, and has been promulgated by the Office of Court Administration in eight languages.

When law enforcement intervenes in a domestic violence call, this notice is required to be immediately shared with the victim in writing and, if necessary, orally. The bill also requires the notice to be available in plain English, Spanish, Chinese and Russian. The notice must also be provided by a District Attorney investigating a family offense, and by all family courts to victims of family offenses. The notice shall also be distributed to the state Department of Health for distribution to all hospitals.

While some form of the Victim's Rights Notice has been in effect for over twenty years, the Notice has not been substantially changed. A.5921 substantially simplifies the Notice so that it is now in plain language that is much more clear and understandable to victims in crisis of all literacy levels, while at the same time expanding considerably on the information it provides. The bill also incorporates changes in the law that have taken place since the Notice was first developed. The bill also requires that the Victim's Rights Notice be translated into, at a minimum, Spanish, Russian and Chinese.

The revised Notice reads at an average 8.7 (middle school) level, in contrast to the 14.0 (college level) average of the current notice and provides critical information to domestic violence victims throughout New York State. The information is broken down into shorter sentences with easier to read bullet points. It provides victims with basic yet detailed and straightforward information about their rights and remedies under the law, important information about emergency domestic violence hotlines and services, legal and medical resources, what to expect from law enforcement, including what assistance may be immediately available to them when they first call law enforcement, and what remedies may be available through criminal and family courts.

The Women's Bar Association of the State of New York supports A.5921.

Memorandum in Support

NYSBA Memorandum #12

April 3, 2017

A. 6049
S. 4569

By: M. of A. Mayer
By: Senator Savino
Assembly Committee: Judiciary
Senate Committee: Judiciary
Effective Date: 90th day after it shall have become
a law

AN ACT to amend the family court act and the domestic relations law, in relation to orders for temporary spousal support in conjunction with temporary and final orders of protection in family court and calculation of maintenance cap in family and supreme court

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

The New York State Bar Association supports this bill, which would permit Family Courts to award temporary spousal support to victims when issuing temporary orders of protection.

BACKGROUND

An order of protection is one of the most valuable legal tools for reducing incidents of abuse. Studies indicate that the majority of victims who are granted orders of protection feel that they are protected from repeated incidents of physical and psychological abuse, in addition to helping them regain a sense of well-being. However, for many of the victims, economic dependency is a substantial factor preventing them from seeking reprieve from their abuser in court.

ANALYSIS

For thousands of domestic violence victims, the first step towards leaving their abuser is to file a petition for a temporary order of protection in Family Court. Often, once individuals take this step, their abuser retaliates by withdrawing financial support, discontinuing payments of rent or mortgage and utilities, and cutting off access to funds in marital bank accounts. As a result, many victims who seek assistance from the court find themselves facing hunger, lack of heat and electricity, and even homelessness. While these individuals can seek financial redress through spousal support petitions or divorce actions, it usually takes several months before the courts can hear those cases and grant any temporary relief. During the intervening period, victims feel forced to choose between a life of violence and a life of poverty, causing many to return to their abusers and discontinue their orders of protection. Domestic violence victims deserve the right to seek safety from their abusers without suffering financial devastation.

To help eliminate this economic barrier to seeking an order of protection, thirty-six (36) states currently permit domestic violence victims to obtain temporary spousal support at the time a temporary order of protection is issued. This bill, as recommended by the Family Court Advisory and Rules Committee and introduced at the request of the Chief Administrative Judge, would bring this remedy to New York's Family Courts, by directing the parties to appear in family court within seven business days of issuing the temporary order of protection for the court to consider issuing a temporary order of spousal support. The order may be issued notwithstanding the failure of the respondent to appear nor a lack of information regarding the income of the parties. The amount of temporary spousal support will be governed by Article 4 of the Family Court Act, which sets forth the formula for determining spousal support. This change in the law is critically important for victims who are elderly, pregnant, and those without minor children who do not qualify for temporary child support.

In addition, the bill would amend the Domestic Relations Law and Family Court Act to fix the date of the biennial adjustment of the spousal maintenance cap at March 1st, rather than the current adjustment date of January 31st, which is not an administratively feasible date for doing so. This amendment would conform the adjustment date to that which is already in effect for the child support income cap, self-support reserve and poverty level.

CONCLUSION

Domestic violence victims already face numerous obstacles when making the choice to leave their abusers. This bill would empower more domestic violence victims to seek the safety that an order of protection can provide by helping them to obtain an order of temporary spousal support within seven business days of filing a family offense petition.

Based on the foregoing, the New York State Bar Association **SUPPORTS** the enactment of this legislation.

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Position Statement - 2017

A.6049 / S.4569

Temporary Spousal Support

Support

The Women's Bar Association of New York (WBASNY) supports bill A.6049 (Mayer, Weinstein) / S.4569 (Savino), which would permit Family Courts to award temporary spousal support to victims when issuing temporary orders of protection.

An order of protection is one of the most valuable legal tools for reducing incidents of abuse. Studies indicate that the majority of victims who are granted orders of protection feel that they are protected from repeated incidents of physical and psychological abuse, in addition to helping them regain a sense of well-being. However, for many of the victims, economic dependency is a substantial factor preventing them from seeking reprieve from their abuser in court.

For thousands of domestic violence victims, the first step towards leaving their abuser is to file a petition for a temporary order of protection in Family Court. Often, once individuals take this step, their abuser retaliates by withdrawing financial support, discontinuing payments of rent or mortgage and utilities, and cutting off access to funds in marital bank accounts. As a result, many victims who seek assistance from the court find themselves facing hunger, lack of heat and electricity, and even homelessness. While these individuals can seek financial redress through spousal support petitions or divorce actions, it usually takes several months before the courts can hear those cases and grant any temporary relief. During the intervening period, victims feel forced to choose between a life of violence and a life of poverty, causing many to return to their abusers and discontinue their orders of protection. Domestic violence victims deserve the right to seek safety from their abusers without suffering financial devastation.

To help eliminate this economic barrier to seeking an order of protection, thirty-six (36) states currently permit domestic violence victims to obtain temporary spousal support at the time a temporary order of protection is issued. A.6049/S.4569, as recommended by the Family Court Advisory and Rules Committee and introduced at the request of the Chief Administrative Judge, would bring this remedy to New York's Family Courts, permitting them to award temporary spousal support to victims within seven (7) business days of filing for temporary orders of protection, giving them financial support to bridge the gap until their spousal support petition or divorce can be heard by the courts. This change in the law is critically important for victims who are elderly, pregnant, and those without minor children who do not qualify for temporary child support.

Domestic violence victims already face numerous obstacles when making the choice to leave their abusers. We strongly believe that if the New York State Legislature passes A.6049/S.4569, more domestic violence victims will be empowered to seek the safety that an order of protection can provide.

For the foregoing reasons, WBASNY urges the Legislature to pass A.6049/S.4569.

A5921 Weinstein No Same as OLD BILL: [A 9628 OF 2016](#) [Add Alert](#) [Voting](#)

Text Versions: [A 5921](#)

A5921 Weinstein No Same as
Office of Court Administration (Internal # 15 - 2017)
Family Court Act

TITLE....Relates to notification of rights of victims of domestic violence in criminal and family court proceedings

02/17/17 referred to judiciary

04/24/17 reported referred to codes

05/02/17 reported

05/04/17 advanced to third reading cal.290

05/08/17 passed assembly

05/08/17 delivered to senate

05/08/17 REFERRED TO CODES

STATE OF NEW YORK

5921

2017-2018 Regular Sessions

IN ASSEMBLY

February 17, 2017

Introduced by M. of A. WEINSTEIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the criminal procedure law, in relation to notification of rights of victims of domestic violence in criminal and family court proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 5 of section 812 of the family court act, as
2 amended by chapter 224 of the laws of 1994, is amended to read as
3 follows:

4 5. Notice. Every police officer, peace officer or district attorney
5 investigating a family offense under this article shall advise the
6 victim of the availability of a shelter or other services in the commu-
7 nity, and shall immediately give the victim written notice of the legal
8 rights and remedies available to a victim of a family offense under the
9 relevant provisions of this act and the criminal procedure law~~[, the~~
10 ~~family court act and the domestic relations law]~~. Such notice shall be
11 available, at minimum, in plain English [~~and~~], Spanish, Chinese and
12 Russian and, if necessary, shall be delivered orally and shall include
13 but not be limited to the information contained in the following state-
14 ment:

15 ~~["If you are the victim of domestic violence, you may request that the~~
16 ~~officer assist in providing for your safety and that of your children,~~
17 ~~including providing information on how to obtain a temporary order of~~
18 ~~protection. You may also request that the officer assist you in obtain-~~
19 ~~ing your essential personal effects and locating and taking you, or~~
20 ~~assist in making arrangement to take you, and your children to a safe~~
21 ~~place within such officer's jurisdiction, including but not limited to a~~
22 ~~domestic violence program, a family member's or a friend's residence, or~~
23 ~~a similar place of safety. When the officer's jurisdiction is more than~~

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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~~1 a single county, you may ask the officer to take you or make arrange-
2 ments to take you and your children to a place of safety in the county
3 where the incident occurred. If you or your children are in need of
4 medical treatment, you have the right to request that the officer assist
5 you in obtaining such medical treatment. You may request a copy of any
6 incident reports at no cost from the law enforcement agency. You have
7 the right to seek legal counsel of your own choosing and if you proceed
8 in family court and if it is determined that you cannot afford an attor-
9 ney, one must be appointed to represent you without cost to you.~~

~~10 You may ask the district attorney or a law enforcement officer to file
11 a criminal complaint. You also have the right to file a petition in the
12 family court when a family offense has been committed against you. You
13 have the right to have your petition and request for an order of
14 protection filed on the same day you appear in court, and such request
15 must be heard that same day or the next day court is in session. Either
16 court may issue an order of protection from conduct constituting a fami-
17 ly offense which could include, among other provisions, an order for the
18 respondent or defendant to stay away from you and your children. The
19 family court may also order the payment of temporary child support and
20 award temporary custody of your children. If the family court is not in
21 session, you may seek immediate assistance from the criminal court in
22 obtaining an order of protection.~~

~~23 The forms you need to obtain an order of protection are available from
24 the family court and the local criminal court (the addresses and tele-
25 phone numbers shall be listed). The resources available in this communi-
26 ty for information relating to domestic violence, treatment of injuries,
27 and places of safety and shelters can be accessed by calling the follow-
28 ing 800 numbers (the statewide English and Spanish language 800 numbers
29 shall be listed and space shall be provided for local domestic violence
30 hotline telephone numbers).~~

~~31 Filing a criminal complaint or a family court petition containing
32 allegations that are knowingly false is a crime."] "Are you the victim
33 of domestic violence? If you need help now, you can call 911 for the
34 police to come to you. You can also call a domestic violence hotline.
35 You can have a confidential talk with an advocate at the hotline about
36 help you can get in your community including: where you can get treat-
37 ment for injuries, where you can get shelter, where you can get support,
38 and what you can do to be safe. The New York State 24-hour Domestic &
39 Sexual Violence Hotline number is (Insert the statewide multilingual 800
40 number). They can give you information in many languages. If you are
41 deaf or hard of hearing, call 711. This is what the police can do:~~

~~42 They can help you and your children find a safe place such as a family
43 or friend's house or a shelter in your community.~~

~~44 You can ask the officer to take you or help you and your children get
45 to a safe place in your community.~~

~~46 They can help connect you to a local domestic violence program.~~

~~47 They can help you get to a hospital or clinic for medical care.~~

~~48 They can help you get your personal belongings.~~

~~49 They must complete a report discussing the incident. They will give
50 you a copy of this police report before they leave the scene. It is
51 free.~~

~~52 They may, and sometimes must, arrest the person who harmed you if you
53 are the victim of a crime. The person arrested could be released at any
54 time, so it is important to plan for your safety.~~

~~55 If you have been abused or threatened, this is what you can ask the
56 police or district attorney to do:~~

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1 File a criminal complaint against the person who harmed you.
2 Ask the criminal court to issue an order of protection for you and
3 your child if the district attorney files a criminal case with the
4 court.
5 Give you information about filing a family offense petition in your
6 local family court.
7 You also have the right to ask the family court for an order of
8 protection for you and your children.
9 This is what you can ask the family court to do:
10 To have your family offense petition filed the same day you go to
11 court.
12 To have your request heard in court the same day you file or the next
13 day court is open.
14 Only a judge can issue an order of protection. The judge does that as
15 part of a criminal or family court case against the person who harmed
16 you. An order of protection in family court or in criminal court can
17 say:
18 That the other person have no contact or communication with you by
19 mail, phone, computer or through other people.
20 That the other person stay away from you and your children, your home,
21 job or school.
22 That the other person not assault, harass, threaten, strangle, or
23 commit another family offense against you or your children.
24 That the other person turn in their firearms and firearms licenses,
25 and not get any more firearms.
26 That you have temporary custody of your children.
27 That the other person pay temporary child support.
28 That the other person not harm your pets or service animals.
29 If the family court is closed because it is night, a weekend, or a
30 holiday, you can go to a criminal court to ask for an order of
31 protection.
32 If you do not speak English or cannot speak it well, you can ask the
33 police, the district attorney, or the criminal or family court to get
34 you an interpreter who speaks your language. The interpreter can help
35 you explain what happened.
36 You can get the forms you need to ask for an order of protection at
37 your local family court (Insert addresses and contact information for
38 courts). You can also get them online: www.NYCourts.gov/forms.
39 You do not need a lawyer to ask for an order of protection. You have a
40 right to get a lawyer in the family court. If the family court finds
41 that you cannot afford to pay for a lawyer, it must get you one for
42 free.
43 If you file a complaint or family court petition, you will be asked to
44 swear to its truthfulness because it is a crime to file a legal document
45 that you know is false."
46 The division of criminal justice services in consultation with the
47 state office for the prevention of domestic violence shall prepare the
48 form of such written notice consistent with the provisions of this
49 section and distribute copies thereof to the appropriate law enforcement
50 officials pursuant to subdivision nine of section eight hundred forty-
51 one of the executive law. Additionally, copies of such notice shall be
52 provided to the chief administrator of the courts to be distributed to
53 victims of family offenses through the family court at such time as such
54 persons first come before the court and to the state department of
55 health for distribution to all hospitals defined under article twenty-
56 eight of the public health law. No cause of action for damages shall

1 arise in favor of any person by reason of any failure to comply with the
2 provisions of this subdivision except upon a showing of gross negligence
3 or willful misconduct.

4 § 2. Subdivision 6 of section 530.11 of the criminal procedure law, as
5 amended by chapter 224 of the laws of 1994, is amended to read as
6 follows:

7 6. Notice. Every police officer, peace officer or district attorney
8 investigating a family offense under this article shall advise the
9 victim of the availability of a shelter or other services in the commu-
10 nity, and shall immediately give the victim written notice of the legal
11 rights and remedies available to a victim of a family offense under the
12 relevant provisions of [~~the criminal procedure law,~~ this chapter and
13 the family court act [~~and the domestic relations law~~]. Such notice shall
14 be prepared, at minimum, in plain English, Spanish [~~and English~~],
15 Chinese and Russian and if necessary, shall be delivered orally, and
16 shall include but not be limited to the information contained in the
17 following statement:

18 [~~If you are the victim of domestic violence, you may request that the~~
19 ~~officer assist in providing for your safety and that of your children,~~
20 ~~including providing information on how to obtain a temporary order of~~
21 ~~protection. You may also request that the officer assist you in obtain-~~
22 ~~ing your essential personal effects and locating and taking you, or~~
23 ~~assist in making arrangements to take you, and your children to a safe~~
24 ~~place within such officer's jurisdiction, including but not limited to a~~
25 ~~domestic violence program, a family member's or a friend's residence, or~~
26 ~~a similar place of safety. When the officer's jurisdiction is more than~~
27 ~~a single county, you may ask the officer to take you or make arrange-~~
28 ~~ments to take you and your children to a place of safety in the county~~
29 ~~where the incident occurred. If you or your children are in need of~~
30 ~~medical treatment, you have the right to request that the officer assist~~
31 ~~you in obtaining such medical treatment. You may request a copy of any~~
32 ~~incident reports at no cost from the law enforcement agency. You have~~
33 ~~the right to seek legal counsel of your own choosing and if you proceed~~
34 ~~in family court and if it is determined that you cannot afford an attor-~~
35 ~~ney, one must be appointed to represent you without cost to you.~~

36 ~~You may ask the district attorney or a law enforcement officer to file~~
37 ~~a criminal complaint. You also have the right to file a petition in the~~
38 ~~family court when a family offense has been committed against you. You~~
39 ~~have the right to have your petition and request for an order of~~
40 ~~protection filed on the same day you appear in court, and such request~~
41 ~~must be heard that same day or the next day court is in session. Either~~
42 ~~court may issue an order of protection from conduct constituting a fami-~~
43 ~~ly offense which could include, among other provisions, an order for the~~
44 ~~respondent or defendant to stay away from you and your children. The~~
45 ~~family court may also order the payment of temporary child support and~~
46 ~~award temporary custody of your children. If the family court is not in~~
47 ~~session, you may seek immediate assistance from the criminal court in~~
48 ~~obtaining an order of protection.~~

49 ~~The forms you need to obtain an order of protection are available from~~
50 ~~the family court and the local criminal court (the addresses and tele-~~
51 ~~phone numbers shall be listed). The resources available in this communi-~~
52 ~~ty for information relating to domestic violence, treatment of injuries,~~
53 ~~and places of safety and shelters can be accessed by calling the follow-~~
54 ~~ing 800 numbers (the statewide English and Spanish language 800 numbers~~
55 ~~shall be listed and space shall be provided for local domestic violence~~
56 ~~hotline telephone numbers).~~

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1 ~~Filing a criminal complaint or a family court petition containing~~
2 ~~allegations that are knowingly false is a crime."] "Are you the victim~~
3 ~~of domestic violence? If you need help now, you can call 911 for the~~
4 ~~police to come to you. You can also call a domestic violence hotline.~~
5 ~~You can have a confidential talk with an advocate at the hotline about~~
6 ~~help you can get in your community including: where you can get treat-~~
7 ~~ment for injuries, where you can get shelter, where you can get support,~~
8 ~~and what you can do to be safe. The New York State 24-hour Domestic &~~
9 ~~Sexual Violence Hotline number is (Insert the statewide multilingual 800~~
10 ~~number). They can give you information in many languages. If you are~~
11 ~~deaf or hard of hearing, call 711.~~

12 This is what the police can do:

13 They can help you and your children find a safe place such as a family
14 or friend's house or a shelter in your community.

15 You can ask the officer to take you or help you and your children get
16 to a safe place in your community.

17 They can help connect you to a local domestic violence program.

18 They can help you get to a hospital or clinic for medical care.

19 They can help you get your personal belongings.

20 They must complete a report discussing the incident. They will give
21 you a copy of this police report before they leave the scene. It is
22 free.

23 They may, and sometimes must, arrest the person who harmed you if you
24 are the victim of a crime. The person arrested could be released at any
25 time, so it is important to plan for your safety.

26 If you have been abused or threatened, this is what you can ask the
27 police or district attorney to do:

28 File a criminal complaint against the person who harmed you.

29 Ask the criminal court to issue an order of protection for you and
30 your child if the district attorney files a criminal case with the
31 court.

32 Give you information about filing a family offense petition in your
33 local family court.

34 You also have the right to ask the family court for an order of
35 protection for you and your children.

36 This is what you can ask the family court to do:

37 To have your family offense petition filed the same day you go to
38 court.

39 To have your request heard in court the same day you file or the next
40 day court is open.

41 Only a judge can issue an order of protection. The judge does that as
42 part of a criminal or family court case against the person who harmed
43 you. An order of protection in family court or in criminal court can
44 say:

45 That the other person have no contact or communication with you by
46 mail, phone, computer or through other people.

47 That the other person stay away from you and your children, your home,
48 job or school.

49 That the other person not assault, harass, threaten, strangle, or
50 commit another family offense against you or your children.

51 That the other person turn in their firearms and firearms licenses,
52 and not get any more firearms.

53 That you have temporary custody of your children.

54 That the other person pay temporary child support.

55 That the other person not harm your pets or service animals.

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1 If the family court is closed because it is night, a weekend, or a
2 holiday, you can go to a criminal court to ask for an order of
3 protection.

4 If you do not speak English or cannot speak it well, you can ask the
5 police, the district attorney, or the criminal or family court to get
6 you an interpreter who speaks your language. The interpreter can help
7 you explain what happened.

8 You can get the forms you need to ask for an order of protection at
9 your local family court (Insert addresses and contact information for
10 courts). You can also get them online: www.NYCourts.gov/forms.

11 You do not need a lawyer to ask for an order of protection.

12 You have a right to get a lawyer in the family court. If the family
13 court finds that you cannot afford to pay for a lawyer, it must get you
14 one for free.

15 If you file a complaint or family court petition, you will be asked to
16 swear to its truthfulness because it is a crime to file a legal document
17 that you know is false."

18 The division of criminal justice services in consultation with the
19 state office for the prevention of domestic violence shall prepare the
20 form of such written notice consistent with provisions of this section
21 and distribute copies thereof to the appropriate law enforcement offi-
22 cials pursuant to subdivision nine of section eight hundred forty-one of
23 the executive law.

24 Additionally, copies of such notice shall be provided to the chief
25 administrator of the courts to be distributed to victims of family
26 offenses through the criminal court at such time as such persons first
27 come before the court and to the state department of health for distrib-
28 ution to all hospitals defined under article twenty-eight of the public
29 health law. No cause of action for damages shall arise in favor of any
30 person by reason of any failure to comply with the provisions of this
31 subdivision except upon a showing of gross negligence or willful miscon-
32 duct.

33 § 3. This act shall take effect on the ninetieth day after it shall
34 have become a law.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A5921

SPONSOR: Weinstein

TITLE OF BILL:

An act to amend the family court act and the criminal procedure law, in relation to notification of rights of victims of domestic violence in criminal and family court proceedings

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of his Family Court and Rules Advisory Committee.

The amendments to section 812 of the Family Court Act and CPL 530.11, contained in the comprehensive domestic violence statute enacted in 1994 (L. 1994, c. 222, 224), included important protections for alleged victims of domestic violence. The statutes placed a collective responsibility upon law enforcement, prosecutors and the courts to ensure that victims would be made aware of their rights, of the expectations they may have to obtain assistance from both the civil and criminal justice systems and of the remedies and resources available to them. The notice must be in writing in both English and Spanish and must recite the statutory language verbatim. Law enforcement has provided the notice as part of the victims' copy of the "Domestic Incident Report" and the court system has made the notices available in eight languages. See www.nycourts.gov. However, the required language in the notice is overly complex and, particularly where alleged victims of domestic violence are unrepresented, has impeded the statutory goal of making the justice system fully responsive to the needs of victims of abuse.

This measure would amend section 812 of the Family Court Act and CPL 530.11 to substantially simplify the language contained in the notice to victims while, at the same time, expanding the breadth of information it provides. The measure adds flexibility by providing that the notice use the language provided and that it be made available, at a minimum, in plain English, Spanish, Chinese and Russian. As the chart below indicates, using five generally accepted means of measurement of the grade level of the language used, the notice proposed by this measure averages 8.6 (middle school) in grade level compared to the 16.3 (college senior) average level of the existing notice and its readability score is substantially higher than that of the current notice:{1}

Measurement Formula	Existing Notice	Proposed Notice
Flesch-Kincaid Grade Level	15.3	
6.7		
Gunning-Fog Score	20.5	10.6
Coleman-Liau Index	12.0	9.0
SMOG Index	17.6	10.8
Automated Readability Index	15.9	5.7
Average Grade Level	16.3	8.6
Text Statistics		
Character Count	2140	3068
Syllable Count	820	1028

Word Count	734	726
Sentence Count	15	43
Characters per Word	4.7	4.2
Syllables per Word	1.6	1.4
Words per Sentence	30.3	16.9
Readability Score	39.5	72.9
(Flesch-Kincaid; scale: 1 to 100)		

The language in the proposed notice mirrors the basic principles of writing in plain English, in particular, the use of short, declarative sentences, use of personal pronouns, use of active voice, avoidance of legal terms and organization into easy-to-read bullets. See, e.g., Federal Plain Language Guidelines (www.plainlanguage.gov); Writing for Self-represented Litigants: A Guide for Maryland Courts and Legal Services Providers (Md. Access to Justice Commission, Nov., 2012). As indicated on the web-site www.writeclearly.org:

Limited English speakers find it particularly difficult to navigate legal texts that contain strange words and describe unfamiliar procedures. These readers are substantially disadvantaged in accessing legal information.

Research has demonstrated that where documents are too complex for readers, they generally stop reading. See W.H. DuBay, "Principles of Readability, Readability and Reader Persistence," at 30 (National Adult Literacy Database, 2004; www.nald.ca).

Utilization of plain English is particularly important for victims of domestic violence, who may be experiencing trauma as a result of the alleged abusive incident or incidents, trauma that itself makes it more difficult for victims to understand their options and to make the often difficult decisions required at the outset of abuse cases. Significantly, victims are most often not represented by counsel either at the point of a law enforcement response to a call to 911 or upon their first appearances in Family Court seeking temporary orders of protection. Noting the high incidence of unrepresented litigants in family law-related matters in New York State courts, the 2010, 2014 and 2015 Reports to the Chief Judge of the Task Force (now Permanent Commission) to Expand Access to Civil Legal Services in New York included simplification of forms among the recommendations. In drastically reducing the complexity of the statutorily-required notice to victims of domestic violence, this measure would fulfill those recommendations and would enhance the capacity of the justice system to respond effectively to victims' needs.

This measure, which would have no fiscal impact on the State, would take effect 90 days after it shall become a law.

2016 LEGISLATIVE HISTORY:

OCA 2016-82R
Assembly 9628 (M. of A. Weinstein) (PASSED)

{1} See www.readability-score.com (visited Nov. 29, 2016).

A2919 Lavine (MS) Same as [S 405](#) ROBACH OLD BILL: [A 1322 OF 2016](#) [Add Alert](#) [Voting](#)

Text Versions: [A 2919](#)

A 2919 Lavine (MS) Same as [S 405](#) ROBACH
Civil Rights Law

TITLE....Establishes the right of tenants to call police or emergency assistance without fear of losing their housing

01/23/17 referred to judiciary

03/07/17 reported referred to codes

03/13/17 reported

03/16/17 advanced to third reading cal.141

05/01/17 passed assembly

05/01/17 delivered to senate

05/01/17 REFERRED TO CODES

S405 ROBACH Same as [A 2919](#) Lavine (MS)

ON FILE: 01/04/17 Civil Rights Law

TITLE....Establishes the right of tenants to call police or emergency assistance without fear of losing their housing

01/04/17 REFERRED TO CODES

05/16/17 REPORTED AND COMMITTED TO HOUSING, CONSTRUCTION AND COMMUNITY DEVELOPMENT

06/14/17 COMMITTEE DISCHARGED AND COMMITTED TO RULES

STATE OF NEW YORK

2919

2017-2018 Regular Sessions

IN ASSEMBLY

January 23, 2017

Introduced by M. of A. LAVINE, WEINSTEIN, LUPARDO, WEPRIN, ROSENTHAL, MOSLEY, BRONSON, PEOPLES-STOKES, TITUS, ABINANTI, FAHY, WALKER, ZEBROWSKI, RAIA, HARRIS, SEPULVEDA -- Multi-Sponsored by -- M. of A. LUPINACCI, PERRY, SIMON -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Article 9 and sections 90 and 91 of the civil rights law,
2 as renumbered by chapter 310 of the laws of 1962, are renumbered article
3 10 and sections 100 and 101, and a new article 9 is added to read as
4 follows:

ARTICLE 9

RIGHT TO CALL POLICE AND EMERGENCY

ASSISTANCE/VICTIM PROTECTIONS

Section 90. Legislative findings.

- 9 91. Right to call for police and emergency assistance; victim
10 protections.
11 92. Protections not applicable to breaches of lease, illicit
12 activities or other violations of law.
13 93. Right of property owners to be free of penalty for respect-
14 ing the rights of an occupant to request police or emer-
15 gency assistance.
16 94. Limitation on right to request police or emergency assist-
17 ance prohibited.
18 95. Defenses.
19 96. Removal of the perpetrator of violence while assuring
20 continued occupancy by victim.
21 97. Remedies.
22 98. Guidance authorized.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD02922-01-7

1 § 90. Legislative findings. No victim of domestic violence, or other
2 person threatened with violence or in jeopardy of harm, should fail to
3 access police or emergency assistance when needed because of the fear
4 that doing so may result in losing their housing through eviction or
5 other actions to remove them from the property. Some local laws or poli-
6 cies have the effect of treating such requests for police or emergency
7 aid as a disturbance constituting a "public nuisance" or otherwise
8 treating the individual faced with the violence and in need of assist-
9 ance as an undesirable tenant or undesirable influence on the neighbor-
10 hood based upon a call for help to their home. Legislation is needed to
11 assure that victims of violence or threats of harm or violence are not
12 penalized in relation to any law enforcement activity and intervention
13 necessary to address offender accountability and victim safety.

14 Municipalities throughout the state have increasingly begun to adopt
15 local laws and ordinances to address public nuisances or other intru-
16 sions on the quiet enjoyment of their residents and communities. Despite
17 their intent to aid communities, overly broad ordinances have instead
18 had a harmful chilling effect deterring victims of violence and crime
19 from accessing police assistance and have jeopardized public safety.
20 Given the negative impact that certain provisions have on the community
21 at large, and to victims of crime in particular, remedial legislation is
22 necessary that will both protect the rights of domestic violence and
23 crime victims to access essential police assistance, as well as preserve
24 the locality's right to address conduct that may undermine the communi-
25 ty's safety or integrity.

26 The legislature therefore finds that it is desirable to clarify the
27 law in this area in order to protect women and others from violence and
28 crime.

29 The legislature further finds that there is a need to assure that
30 victims of violence, including persons threatened with harm or violence,
31 have a clear right to access assistance to protect personal or public
32 safety.

33 The legislature finally finds that clarification in this area will
34 advance the state's interest in stopping crime and further the aims of
35 penal laws that depend on citizens to report incidents of crime to law
36 enforcement.

37 With this remedial legislation the legislature specifically intends
38 that the coverage of this article includes, but is not limited to, laws
39 or ordinances that use any form of cumulative point system for the
40 purpose of identifying any persons or properties who or which would be
41 subject to municipal enforcement action.

42 § 91. Right to call for police and emergency assistance; victim
43 protections. 1. Any person who is a victim of domestic violence, as
44 defined in section four hundred fifty-nine-a of the social services law,
45 or who otherwise believes he or she is in need of police or emergency
46 assistance has the right to request such assistance and to be free of
47 any direct or indirect penalty or reprisal for accessing assistance, or
48 because he or she resides at a property where domestic violence or other
49 law enforcement activity occurred. Other than as provided in section
50 ninety-two of this article, no victim of conduct which has been used as
51 the grounds for the application of a local law or ordinance established
52 for the purpose of regulating nuisances shall be directly or indirectly
53 penalized, or otherwise subject to reprisal by application of such local
54 law, including by termination or refusal to renew a tenancy or by
55 eviction.

1 2. No residential occupant shall be required, either orally or in
2 writing, to waive rights under this article, and any such waiver shall
3 be void and unenforceable.

4 § 92. Protections not applicable to breaches of lease, illicit activ-
5 ities or other violations of law. The protections of this article shall
6 not be deemed to prohibit a municipality from enforcing an ordinance or
7 local law, nor restrict a landlord from terminating, evicting or refus-
8 ing to renew a tenancy, when such action is premised upon grounds other
9 than access of police or emergency assistance or is otherwise premised
10 on conduct unrelated to the residential occupant's status as a target or
11 victim of violence or harm.

12 § 93. Right of property owners to be free of penalty for respecting
13 the rights of an occupant to request police or emergency assistance. No
14 landlord or other property owner shall be subject to fines or loss of
15 permits or licenses by a municipality for failing to take steps to
16 remove an occupant who has exercised rights under this article.

17 § 94. Limitation on right to request police or emergency assistance
18 prohibited. A municipality, municipal authority, landlord or property
19 owner shall not prohibit, restrict, penalize or in any other way direct-
20 ly or indirectly limit any person's exercise of rights under this arti-
21 cle. The protections of this prohibition shall extend to any residential
22 occupant upon whose behalf a third party has called for police or emer-
23 gency assistance.

24 § 95. Defenses. 1. It is a defense to any judicial or administrative
25 action or proceeding taken by any municipality or municipal authority
26 enforcing any local law or ordinance that the enforcement action direct-
27 ly or indirectly penalizes a residential occupant or property owner for
28 the exercise of rights under this article. Prior to initiation of any
29 such enforcement action or proceeding all parties and any residential
30 occupant that may be so impacted shall be given written notice by the
31 municipality of the protections of this article and shall have the right
32 to be heard in the action or proceeding to advance the defenses provided
33 by this article.

34 2. It is a defense in any action or proceeding by a landlord or other
35 owner of real property to regain possession of that property that the
36 action or proceeding directly or indirectly penalizes a residential
37 occupant for the exercise of rights under this article. Any residential
38 occupant whose right to continued occupancy may be impacted by the
39 outcome shall be given notice of the action or proceeding by the party
40 initiating the action or proceeding and shall have the right to appear
41 as a necessary party in accordance with the provisions of the civil
42 practice law and rules and the real property actions and proceedings law
43 in order to advance the defenses provided by this article.

44 § 96. Removal of the perpetrator of violence while assuring continued
45 occupancy by victim. Actions including termination, eviction or refusal
46 to renew a leasehold interest or termination of any other form of lawful
47 occupancy through a judicial proceeding may be carried out against the
48 perpetrator of such violence or harm. Notwithstanding the terms of an
49 existing lease, written or oral, or other form of occupancy agreement,
50 any person with rights described in section ninety-one of this article
51 shall have the right to continue in occupancy, and the court may so
52 order, for a term equivalent to the balance of the original term and
53 under the same terms and conditions as provided in the original lease or
54 occupancy agreement.

55 § 97. Remedies. Any person or entity aggrieved by a violation of the
56 protections created by this article shall have the right to bring an

A. 2919

4

1 action or special proceeding in a court of appropriate jurisdiction to
2 seek damages and/or declaratory and injunctive relief with respect to
3 such violation. A prevailing plaintiff may be entitled to an award of
4 costs and attorney's fees.

5 § 98. Guidance authorized. The New York state office for the
6 prevention of domestic violence and the division of criminal justice
7 services, upon consultation with the other, are jointly authorized to
8 provide guidance with respect to drafting of local nuisance ordinances
9 and evaluation of their impact on access to police and emergency
10 services.

11 § 2. This act shall take effect immediately and shall apply to all
12 pending actions and proceedings.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A2919

SPONSOR: Lavine (MS)

TITLE OF BILL: An act to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections

PURPOSE OF BILL:

This legislation will help ensure that victims of domestic violence and crime victims can access police or emergency assistance without fear of losing their housing.

SUMMARY OF PROVISIONS:

Section 1 of the bill creates a new Article 9 in the Civil Rights Law that outlines rights and protections for domestic violence and other crime victims in separate sections of the Article as follows. New Section 90 of the Civil Rights Law relates to legislative findings.

New Section 91 of the Civil Rights Law provides any person who is a victim of domestic violence or who otherwise believes that he or she is in need of police or emergency assistance the right to request such assistance without penalty or reprisal, by application of a local law or ordinance, for accessing the assistance.

New Section 92 of the Civil Rights Law outlines exceptions to the protections outlined in new section 91 of the Civil Rights Law.

New Section 93 of the Civil Rights Law outlines the rights of property owners to be free of penalty for respecting the rights of an occupant to request police or emergency assistance.

New Section 94 of the Civil Rights Law prohibits limitations on a victim's rights under the article to request police or emergency assistance.

New Section 95 of the Civil Rights Law creates defenses in local ordinance enforcement actions by municipalities or property owners in violation of the protections created under the Article. It also provides for notice to residential occupants in such enforcement actions and standing to contest application of the nuisance ordinance to their residence in the face of an eviction.

New Section 96 of the Civil Rights Law provides for the removal of the perpetrator of violence while assuring continued occupancy by a victim.

New Section 97 of the Civil Rights Law creates remedies for any person or entity aggrieved by a violation of the protections created under the Article.

New Section 98 of the Civil Rights Law allows for guidance by the New

York State Office for The Prevention of Domestic Violence and the Division of Criminal Justice Services with respect to drafting of local nuisance ordinances and evaluation of their impact on access to police and emergency services.

Section 2 of the bill is the effective date.

JUSTIFICATION:

No victim of domestic violence or other person threatened with a crime in New York should be afraid to access police or emergency assistance because doing so may jeopardize their housing. Nevertheless, numerous municipalities throughout New York have passed local laws, so called "nuisance ordinances," that have this precise result. While these local laws often aim to address drug, weapon, disorderly conduct, and property crimes and ensure the quiet enjoyment of community members, they are frequently overboard and, instead, have a chilling effect on the reporting of crime by crime victims-particularly victims of domestic violence-that undermines public safety.

Nuisance ordinances have traditionally targeted abandoned properties where crime occurred with more frequency because properties were unsupervised and unattended. Yet, in recent years, more and more municipalities in New York and nationally have employed the nuisance concept to regulate and sanction activities at occupied properties.

Nuisance ordinances take several forms. Many ordinances in New York assign points to properties where certain criminal convictions occurred or where certain conduct was merely alleged to have occurred. In some communities, ordinances are triggered if police or emergency services provide aid or are called to a property a certain number of times over a set time period, such as three calls for help to the police over 12 months. Generally, these nuisance laws are applied regardless of whether the residential occupant was a victim of the cited crime or accessed police assistance out of reasonable, legitimate fear or concern. A Harvard study established that an ordinance in Milwaukee punished victims of domestic violence far more frequently than the offenses it was intended to target, such as those related to drugs, property damage, and weapons.

These ordinances may authorize the municipality to directly penalize the residential occupant or may promote "third-party policing," the assigning of policing responsibilities to non-police actors, by holding property owners responsible for the behavior of their tenants. Under this structure, once a property receives a nuisance citation, the owner must "abate the nuisance" or face stiff fines, revocation of rental permits, or property closure. This requirement frequently results in landlords evicting the tenants at issue, for, even if not expressly required, eviction is the only certain abatement method. Under these laws, tenants often have no notice of or standing to contest application of the nuisance ordinance to their residence, even in the face of eviction.

In communities with these ordinances, domestic violence victims reasonably feel they have no choice but to endure threats, harassment, or violence without police intervention when the alternative is the likely eviction, housing insecurity, and risk of homelessness that result from a nuisance citation.

Enforcement of nuisance ordinances can also violate federal and Constitutional protections. Furthermore, when these laws pressure landlords to evict, they put landlords in an untenable position between two legal mandates.

This measure will help ensure that all New Yorkers can request lifesav-

ing emergency aid in response to violence without fearing they will be doubly victimized by housing loss because their call for help triggered a nuisance ordinance that is applied against crime victims. It will protect victims of domestic violence, as well as all residents who need to access emergency and police assistance.

LEGISLATIVE HISTORY:

Committed to Rules 2014
2016 referred to Rules

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

None.

EFFECTIVE DATE:

Immediately and shall apply to all pending actions and proceedings.

A6049 Mayer Same as [S 4569](#) SAVINO [Add Alert](#) [Voting](#)

Text Versions: [A 6049](#)

A 6049 Mayer Same as [S 4569](#) SAVINO
Office of Court Administration (Internal # 19 - 2017)
Family Court Act
TITLE....Relates to orders for temporary spousal
support in conjunction with temporary and final orders
of protection in family court and calculation of
maintenance cap in family and supreme court
02/22/17 referred to judiciary
03/07/17 reported referred to codes
03/22/17 reported
03/23/17 advanced to third reading cal.163
03/29/17 passed assembly
03/29/17 delivered to senate
03/29/17 REFERRED TO JUDICIARY

S4569 SAVINO Same as [A 6049](#) Mayer
Office of Court Administration (Internal # 19 - 2017)
ON FILE: 02/17/17 Family Court Act
TITLE....Relates to orders for temporary spousal
support in conjunction with temporary and final orders
of protection in family court and calculation of
maintenance cap in family and supreme court
02/17/17 REFERRED TO JUDICIARY

STATE OF NEW YORK

6049

2017-2018 Regular Sessions

IN ASSEMBLY

February 22, 2017

Introduced by M. of A. MAYER, WEINSTEIN, OTIS -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the domestic relations law, in relation to orders for temporary spousal support in conjunction with temporary and final orders of protection in family court and calculation of maintenance cap in family and supreme court

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Paragraph (d) of subdivision 2 of section 412 of the family
 2 court act, as amended by chapter 269 of the laws of 2015, is amended to
 3 read as follows:
 4 (d) "income cap" shall mean up to and including one hundred [~~seventy-~~
 5 ~~five~~] seventy-eight thousand dollars of the payor's annual income;
 6 provided, however, beginning [~~January thirty first~~] March first, two
 7 thousand [~~sixteen~~] eighteen and every two years thereafter, the income
 8 cap amount shall increase by the sum of the average annual percentage
 9 changes in the consumer price index for all urban consumers (CPI-U) as
 10 published by the United States department of labor bureau of labor
 11 statistics for the prior two years multiplied by the then income cap and
 12 then rounded to the nearest one thousand dollars. The office of court
 13 administration shall determine and publish the income cap.
 14 § 2. The section heading of section 828 of the family court act, as
 15 amended by chapter 222 of the laws of 1994, is amended and a new subdi-
 16 vision 5 is added to read as follows:
 17 Temporary order of protection; temporary [~~order~~] orders for child
 18 support and spousal maintenance.
 19 5. Notwithstanding the provisions of section eight hundred seventeen
 20 of this article, where a temporary order of spousal support has not
 21 already been issued, the court may, in addition to the issuance of a
 22 temporary order of protection pursuant to this section, issue an order

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
 [-] is old law to be omitted.

LBD06639-01-7

1 directing the parties to appear within seven business days of the issu-
2 ance of the order in the family court, in the same action, for consider-
3 ation of an order for temporary spousal support in accordance with arti-
4 cle four of this act. If the court directs the parties to so appear, the
5 court shall direct the parties to appear with information with respect
6 to income and assets, but a temporary order for spousal support may be
7 issued pursuant to article four of this act on the return date notwith-
8 standing the respondent's default upon notice and notwithstanding that
9 information with respect to income and assets of the petitioner or
10 respondent may be unavailable.

11 § 3. Section 842 of the family court act, as amended by chapter 526
12 and the closing paragraph as added by chapter 480 of the laws of 2013,
13 is amended to read as follows:

14 § 842. Order of protection. An order of protection under section eight
15 hundred forty-one of this part shall set forth reasonable conditions of
16 behavior to be observed for a period not in excess of two years by the
17 petitioner or respondent or for a period not in excess of five years
18 upon (i) a finding by the court on the record of the existence of aggra-
19 vating circumstances as defined in paragraph (vii) of subdivision (a) of
20 section eight hundred twenty-seven of this article; or (ii) a finding by
21 the court on the record that the conduct alleged in the petition is in
22 violation of a valid order of protection. Any finding of aggravating
23 circumstances pursuant to this section shall be stated on the record and
24 upon the order of protection. The court may also, upon motion, extend
25 the order of protection for a reasonable period of time upon a showing
26 of good cause or consent of the parties. The fact that abuse has not
27 occurred during the pendency of an order shall not, in itself, consti-
28 tute sufficient ground for denying or failing to extend the order. The
29 court must articulate a basis for its decision on the record. The dura-
30 tion of any temporary order shall not by itself be a factor in determin-
31 ing the length or issuance of any final order. Any order of protection
32 issued pursuant to this section shall specify if an order of probation
33 is in effect. Any order of protection issued pursuant to this section
34 may require the petitioner or the respondent:

35 (a) to stay away from the home, school, business or place of employ-
36 ment of any other party, the other spouse, the other parent, or the
37 child, and to stay away from any other specific location designated by
38 the court, provided that the court shall make a determination, and shall
39 state such determination in a written decision or on the record, whether
40 to impose a condition pursuant to this subdivision, provided further,
41 however, that failure to make such a determination shall not affect the
42 validity of such order of protection. In making such determination, the
43 court shall consider, but shall not be limited to consideration of,
44 whether the order of protection is likely to achieve its purpose in the
45 absence of such a condition, conduct subject to prior orders of
46 protection, prior incidents of abuse, extent of past or present injury,
47 threats, drug or alcohol abuse, and access to weapons;

48 (b) to permit a parent, or a person entitled to visitation by a court
49 order or a separation agreement, to visit the child at stated periods;

50 (c) to refrain from committing a family offense, as defined in subdivi-
51 sion one of section eight hundred twelve of this act, or any criminal
52 offense against the child or against the other parent or against any
53 person to whom custody of the child is awarded, or from harassing,
54 intimidating or threatening such persons;

55 (d) to permit a designated party to enter the residence during a spec-
56 ified period of time in order to remove personal belongings not in issue

1 in this proceeding or in any other proceeding or action under this act
2 or the domestic relations law;

3 (e) to refrain from acts of commission or omission that create an
4 unreasonable risk to the health, safety or welfare of a child;

5 (f) to pay the reasonable counsel fees and disbursements involved in
6 obtaining or enforcing the order of the person who is protected by such
7 order if such order is issued or enforced;

8 (g) to require the respondent to participate in a batterer's education
9 program designed to help end violent behavior, which may include refer-
10 ral to drug and alcohol counselling, and to pay the costs thereof if the
11 person has the means to do so, provided however that nothing contained
12 herein shall be deemed to require payment of the costs of any such
13 program by the petitioner, the state or any political subdivision there-
14 of;

15 (h) to provide, either directly or by means of medical and health
16 insurance, for expenses incurred for medical care and treatment arising
17 from the incident or incidents forming the basis for the issuance of the
18 order;

19 (i) 1. to refrain from intentionally injuring or killing, without
20 justification, any companion animal the respondent knows to be owned,
21 possessed, leased, kept or held by the petitioner or a minor child
22 residing in the household.

23 2. "Companion animal", as used in this section, shall have the same
24 meaning as in subdivision five of section three hundred fifty of the
25 agriculture and markets law;

26 (j) 1. to promptly return specified identification documents to the
27 protected party, in whose favor the order of protection or temporary
28 order of protection is issued; provided, however, that such order may:
29 (A) include any appropriate provision designed to ensure that any such
30 document is available for use as evidence in this proceeding, and avail-
31 able if necessary for legitimate use by the party against whom such
32 order is issued; and (B) specify the manner in which such return shall
33 be accomplished.

34 2. For purposes of this subdivision, "identification document" shall
35 mean any of the following: (A) exclusively in the name of the protected
36 party: birth certificate, passport, social security card, health insur-
37 ance or other benefits card, a card or document used to access bank,
38 credit or other financial accounts or records, tax returns, any driver's
39 license, and immigration documents including but not limited to a United
40 States permanent resident card and employment authorization document;
41 and (B) upon motion and after notice and an opportunity to be heard, any
42 of the following, including those that may reflect joint use or owner-
43 ship, that the court determines are necessary and are appropriately
44 transferred to the protected party: any card or document used to access
45 bank, credit or other financial accounts or records, tax returns, and
46 any other identifying cards and documents; and

47 (k) to observe such other conditions as are necessary to further the
48 purposes of protection.

49 The court may also award custody of the child, during the term of the
50 order of protection to either parent, or to an appropriate relative
51 within the second degree. Nothing in this section gives the court power
52 to place or board out any child or to commit a child to an institution
53 or agency.

54 Notwithstanding the provisions of section eight hundred seventeen of
55 this article, where a temporary order of child support has not already
56 been issued, the court may in addition to the issuance of an order of

1 protection pursuant to this section, issue an order for temporary child
2 support in an amount sufficient to meet the needs of the child, without
3 a showing of immediate or emergency need. The court shall make an order
4 for temporary child support notwithstanding that information with
5 respect to income and assets of the respondent may be unavailable. Where
6 such information is available, the court may make an award for temporary
7 child support pursuant to the formula set forth in subdivision one of
8 section four hundred thirteen of this act. Temporary orders of support
9 issued pursuant to this article shall be deemed to have been issued
10 pursuant to section four hundred thirteen of this act.

11 Upon making an order for temporary child support pursuant to this
12 subdivision, the court shall advise the petitioner of the availability
13 of child support enforcement services by the support collection unit of
14 the local department of social services, to enforce the temporary order
15 and to assist in securing continued child support, and shall set the
16 support matter down for further proceedings in accordance with article
17 four of this act.

18 Where the court determines that the respondent has employer-provided
19 medical insurance, the court may further direct, as part of an order of
20 temporary support under this subdivision, that a medical support
21 execution be issued and served upon the respondent's employer as
22 provided for in section fifty-two hundred forty-one of the civil prac-
23 tice law and rules.

24 Notwithstanding the provisions of section eight hundred seventeen of
25 this article, where a temporary order of spousal support has not already
26 been issued, the court may, in addition to the issuance of an order of
27 protection pursuant to this section, issue an order directing the
28 parties to appear within seven business days of the issuance of the
29 order in the family court, in the same action, for consideration of an
30 order for temporary spousal support in accordance with article four of
31 this act. If the court directs the parties to so appear, the court shall
32 direct the parties to appear with information with respect to income and
33 assets, but a temporary order for spousal support may be issued pursuant
34 to article four of this act on the return date notwithstanding the
35 respondent's default upon notice and notwithstanding that information
36 with respect to income and assets of the petitioner or respondent may be
37 unavailable.

38 In any proceeding in which an order of protection or temporary order
39 of protection or a warrant has been issued under this section, the clerk
40 of the court shall issue to the petitioner and respondent and his or her
41 counsel and to any other person affected by the order a copy of the
42 order of protection or temporary order of protection and ensure that a
43 copy of the order of protection or temporary order of protection [~~be~~] is
44 transmitted to the local correctional facility where the individual is
45 or will be detained, the state or local correctional facility where the
46 individual is or will be imprisoned, and the supervising probation
47 department or the department of corrections and community supervision
48 where the individual is under probation or parole supervision.

49 Notwithstanding the foregoing provisions, an order of protection, or
50 temporary order of protection where applicable, may be entered against a
51 former spouse and persons who have a child in common, regardless of
52 whether such persons have been married or have lived together at any
53 time, or against a member of the same family or household as defined in
54 subdivision one of section eight hundred twelve of this article.

55 In addition to the foregoing provisions, the court may issue an order,
56 pursuant to section two hundred twenty-seven-c of the real property law,

1 authorizing the party for whose benefit any order of protection has been
2 issued to terminate a lease or rental agreement pursuant to section two
3 hundred twenty-seven-c of the real property law.

4 The protected party in whose favor the order of protection or tempo-
5 rary order of protection is issued may not be held to violate an order
6 issued in his or her favor nor may such protected party be arrested for
7 violating such order.

8 § 4. Subparagraph 5 of paragraph (b) of subdivision 5-a of part B of
9 section 236 of the domestic relations law, as amended by chapter 269 of
10 the laws of 2015, is amended to read as follows:

11 (5) "Income cap" shall mean up to and including one hundred [~~seventy-~~
12 ~~five~~] seventy-eight thousand dollars of the payor's annual income;
13 provided, however, beginning [~~January thirty first~~] March first, two
14 thousand [~~sixteen~~] eighteen and every two years thereafter, the income
15 cap amount shall increase by the sum of the average annual percentage
16 changes in the consumer price index for all urban consumers (CPI-U) as
17 published by the United States department of labor bureau of labor
18 statistics for the prior two years multiplied by the then income cap and
19 then rounded to the nearest one thousand dollars. The office of court
20 administration shall determine and publish the income cap.

21 § 5. Subparagraph 4 of paragraph (b) of subdivision 6 of part B of
22 section 236 of the domestic relations law, as amended by chapter 269 of
23 the laws of 2015, is amended to read as follows:

24 (4) "Income cap" shall mean up to and including one hundred [~~seventy-~~
25 ~~five~~] seventy-eight thousand dollars of the payor's annual income;
26 provided, however, beginning [~~January thirty first~~] March first, two
27 thousand [~~sixteen~~] eighteen and every two years thereafter, the income
28 cap amount shall increase by the sum of the average annual percentage
29 changes in the consumer price index for all urban consumers (CPI-U) as
30 published by the United States department of labor bureau of labor
31 statistics for the prior two years multiplied by the then income cap and
32 then rounded to the nearest one thousand dollars. The office of court
33 administration shall determine and publish the income cap.

34 § 6. This act shall take effect on the ninetieth day after it shall
35 have become a law.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A6049

SPONSOR: Mayer

TITLE OF BILL:

An act to amend the family court act and the domestic relations law, in relation to orders for temporary spousal support in conjunction with temporary and final orders of protection in family court and calculation of maintenance cap in family and supreme court

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of his Family Court Advisory and Rules Committee.

The Family Protection and Domestic Violence Intervention Act of 1994 (L. 1994, c. 222) provided authority for Family Courts, when issuing orders of protection in family offense cases, to issue temporary orders of child support. This has provided a needed life-saver to petitioners in family offense cases at a particularly vulnerable point in their lives, that is, when they are taking steps to escape alleged domestic violence. This provision has proven invaluable in getting the process started quickly with a temporary order in place.

Experience during the two decades under the statute has revealed a significant gap - that is, that it does not provide an analogous safety net to married petitioners in family offense proceedings who do not have minor, dependent children. As the Appellate Division, Third Department noted, in *Matter of Childers v. Childers*, 260 A.D.2d 767 (3d Dept., 1999), child support, but not spousal support, may be ordered in conjunction with the issuance of an order of protection. As has been evident in cases in the Unified Court System's Integrated Domestic Violence Courts, petitioners in need of temporary spousal support are often older litigants in long-term marriages, who are victims of domestic violence, frequently including financial abuse. In many instances, they lack means of their own to cover immediate expenses, particularly the expenses of relocation, as they seek safe refuges from violence.

This measure would remedy this gap. It would amend sections 828 and 842 of the Family Court Act to provide authority for the Family Court, when issuing temporary and final orders of protection, to direct the parties to appear, in the same action, within seven business days of the issuance of the temporary order of protection for consideration of an order of temporary spousal support. While the parties will be directed to appear with information with respect to income and assets, the measure permits issuance of a temporary order of spousal support on the return date "notwithstanding the respondent's default upon notice and notwithstanding that information with respect to income and assets of the petitioner or respondent may be unavailable." Upon making an order for temporary spousal support, the court shall set the spousal support matter down for determination of the final order.

As was recognized by the Legislature in enacting recent legislation (L. 2013, c. 526), economic abuse is a significant form of domestic violence and is often inflicted upon elderly, vulnerable family members. See Memo

in Support of A. 7400 (L. 2013, c. 526). As recently documented in Under the Radar: The New York State Elder Abuse Study: Final Report, financial abuse is the most common form of abuse reported by the elderly.^{1} Even where financial abuse has not been alleged, a married family offense petitioner's lack of income or access to family assets may impede his or her ability to escape to a place of safety, free of domestic violence, and is frequently the reason many domestic violence victims return repeatedly to their abusers before being able to permanently extricate themselves from abusive situations. Often a victim needs a temporary life-line, some means of securing resources to tide him or her over while seeking a more long-term order in a Supreme or Family Court proceeding. This measure would thus provide much needed emergency relief.

Finally, the measure would also amend Family Court Act § 412(10) and Domestic Relations Law § 236B(5-a)(b)(5) and § 236B(6)(b)(4) to fix the date of the biennial adjustment of the spousal maintenance "cap" at March 1st, rather than January 31st. It would commence the adjustment process in 2018, since the 2016 adjustment from \$175,000 to \$178,000 has already been made. This measure would conform the adjustment date to that already in effect for the child support income "cap," self-support reserve and poverty level.

This measure, which would have no fiscal impact, would take effect 90 days after it shall have become a law.

2015-16 Legislative History:

Senate 5815-A (Sen. Savino) (amended and recommitted to Judiciary)
Assembly 7032-A (M. of A. Mayer) (PASSED)

2014 Legislative History:

OCA 2014-80
Assembly 9465 (M. of A. Mayer) (reported ref to Codes)

^{1} See Under the Radar: The New York State Elder Abuse Study: Final Report (Lifespan & Cornell-Weill Medical Center, May 2011), available at:

[http://ocfs.ny.gov/maintreports/Under %20the%20Radar%2005%2012%2011%20final%20report.pdf](http://ocfs.ny.gov/maintreports/Under%20the%20Radar%2005%2012%2011%20final%20report.pdf) (reviewed Jan. 6, 2014).

